



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, मंगलवार 29 मई, 2012/8 ज्येष्ठ, 1934

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हिमाचल प्रदेश सरकार

आबकारी व कराधान विभाग

अधिसूचना

शिमला-2, 28 मई, 2012

संख्या-ई0एक्स0एन0-एफ(1)2/2012.-हिमाचल प्रदेश की राज्यपाल, पंजाब पुर्नगठन अधिनियम, 1966 (1966 का अधिनियम संख्यांक 31) की धारा 5 के अधीन हिमाचल प्रदेश को अन्तर्गत राज्य क्षेत्रों में यथा लागू पंजाब एक्साईज ऐक्ट, 1914 (1914 का 1) की धारा 31 और 32 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और इस विभाग की अधिसूचना संख्या: ई0एक्स0एन0-एफ(1)2/2012, तारीख 10.04.2012 (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) के स्तम्भ 3 में क्रम संख्या 8(e) में विनिर्दिष्ट मद के सामने “Rs. 5.00 per bottle of 650 mls.” शब्दों चिन्हों और अंकों के स्थान पर “Rs. 6.00 per bottle of 650 mls.” शब्द, चिन्ह और अंक रखे जाएंगे।

आदेश द्वारा,

हस्ता0/

प्रधान सचिव (आबकारी एवं कराधान)।

*[Authorative English Text of Department Notification No. EXN-F(1)2/2012, dated 28/5/2012 required under Clause (3) of Article 348 of the Constitution of India].*

## EXCISE AND TAXATION DEPARTMENT

### NOTIFICATION

*Shimla-171002, the 28th May, 2012*

**No.EXN-F (1)2/2012.**—In exercise of the powers conferred by sections 31 & 32 of the Punjab Excise Act, 1914 (1 of 1914) as in force in the territories transferred to Himachal Pradesh under section 5 of the Punjab Re-organization Act, 1966 (Act No. 31 of 1966) and in partial modification of this Department Notification No. EXN-F(1)2/2012, dated 10/4/2012 (hereinafter called the “said notification”), the Governor of Himachal Pradesh is pleased to order that in column 3 of the ‘said notification’, against items specified at Serial No.8(e), for the words sign and figures “Rs. 5.00 per bottle of 650 mls” the words sign and figures Rs. 6.00 per bottle of 650 mls.” shall be substituted.

By order,  
Sd/-

*Pr. Secretary (E&T).*

### आबकारी व कराधान विभाग

#### अधिसूचना

शिमला-2, 28 मई, 2012

**संख्या—ई0एक्स0एन0—एफ(1)2/2012.**—हिमाचल प्रदेश की राज्यपाल, सरकार की अधिसूचना संख्या: 1-17/64—ई0एण्ड0टी0, तारीख 28.10.1965 द्वारा अधिसूचित एच0पी0 एक्सार्डिज फिस्कल आर्डरज, 1965 के साथ पठित हिमाचल प्रदेश में यथा प्रवृत्त पंजाब एक्सार्डिज ऐक्ट, 1914 (1914 का 1) की धारा 31 और 32 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और इस विभाग की अधिसूचना संख्या: ई0एक्स0एन0—एफ (1)2/2012, तारीख 10.04.2012 (जिसे इसमें इसके पश्चात ‘उक्त अधिसूचना’ कहा गया है) के आंशिक उपान्तरण में आदेश देती हैं कि उक्त अधिसूचना के स्तम्भ संख्या: 3 में क्रम संख्या 8(e) में विनिर्दिष्ट मद के सामने “Rs. 5.00 per bottle of 650 mls.” शब्दों, चिन्हों और अंकों के स्थान पर “Rs. 6.00 per bottle of 650 mls.” शब्द, चिन्ह और अंक रखे जाएंगे ।

आदेश द्वारा,  
हस्ता0/—

प्रधान सचिव (आबकारी एवं कराधान)।

*[Authoritative English text of this department notification No. EXN-F (1)-2/2012 dated 28/5/2012 as required under clause (3) of Article 348 of the Constitution of India].*

## EXCISE AND TAXATION DEPARTMENT

### NOTIFICATION

*Shimla-171002, the 28th May, 2012*

**No.EXN-F (1)2/2012.**—In exercise of the powers conferred by section 31 and 32 of the Punjab Excise Act, 1914 (1 of 1914) as in force in Himachal Pradesh read with the H.P Excise

Fiscal Orders 1965 notified vide this Government Notification NO. 1-17/64-E&T, dated 28.10.1965 (hereinafter called the “said notification”) and in partial modification of this Department Notification No. EXN-F (1)2/2012, dated 10/04/2012, (hereinafter called the ‘said notification’), the Governor of Himachal Pradesh is pleased to order that in column 3 of the ‘said notification’ against items specified at Serial No. 8 (e), for the words, sign and figures “Rs.5.00 per bottle of 650 mls.” the words, sign and figures “ Rs.6.00 per bottle of 650 mls .” shall be substituted.

By order,  
Sd/-  
Pr. Secretary (E&T).

## उद्योग विभाग

आदेश

शिमला-171002, 2-5-2012

**संख्या: उद्योग-ए0(एफ0)11-1/2007-खण्ड-1.-मैसर्ज** नाहन फाउन्ड्री लिमिटेड, नाहन के मैसर्ज हिमाचल प्रदेश राज्य औद्योगिक विकास निगम लिमिटेड, शिमला में समामेलन की स्कीम (उपाबन्ध-‘क’) के मामले में, कम्पनी अधिनियम, 1956 की धारा 391 से 394 के अधीन जारी कारपोरेट कार्य मंत्रालय, भारत सरकार के तारीख 23-02-2012 के आदेश, जिसे अवर सचिव, कारपोरेट कार्य मंत्रालय, भारत सरकार, नई दिल्ली द्वारा उनके पत्र संख्या 24/5/2010.सी0 एल0 III तारीख 24-02-2012 द्वारा सूचित किया गया था, के अनुसरण में, हिमाचल प्रदेश की राज्यपाल, नाहन फाउन्ड्री लिमिटेड, नाहन के उक्त आदेश में अधिकथित शर्तों और निबन्धनों पर हिमाचल प्रदेश राज्य औद्योगिक विकास निगम लिमिटेड, शिमला में विलय का आदेश देती हैं ।

इसके अतिरिक्त, नाहन फाउन्ड्री लिमिटेड, नाहन के हिमाचल प्रदेश राज्य औद्योगिक विकास निगम लिमिटेड, शिमला में विलय के फलस्वरूप, हिमाचल प्रदेश की राज्यपाल, अधिसूचनाएं संख्या: उद्योग. ए(ए)4-1/2000 तारीख 25-03-2008, 28-08-2009, 16-03-2011, 03-09-2011 और 01-12-2011 द्वारा गठित नाहन फाउन्ड्री लिमिटेड, नाहन के निदेशक बोर्ड को भी विघटित (समाप्त) करती हैं ।

आदेश द्वारा,  
हस्ता0/-  
प्रधान सचिव (उद्योग)।

*[Authoritative English Text of this Department’s notification number Ind.A(F)11-1/2007-Vol.-I Dated, 2-5-2012 as required under Article 348(3) of the Constitution of India].*

## INDUSTRIES DEPARTMENT

### ORDER

Shimla-171002, the 2-5- 2012

**No.Ind.A(F)11-1/2007-Vol.-I.**—In pursuance of the Ministry of Corporate Affairs, Government of India, Order dated, 23-2-2012 issued under sections 391 to 394 of the Companies Act, 1956, in the matter of Scheme of Amalgamation of M/s Nahan Foundry Limited, Nahan with the M/s Himachal Pradesh State Industrial Development Corporation Limited, Shimla(Annexure-

“A”) as conveyed by the Under Secretary to the Government of India, Ministry of Corporate Affairs, New Delhi vide their letter No.24/5/2010-CL-III dated:24-2-2012, the Governor, Himachal Pradesh is pleased to order the merger of Nahan Foundry Limited, Nahan with the Himachal Pradesh State Industrial Development Corporation Limited, Shimla on the same terms and conditions as laid down in the said Order.

Further, consequent upon the merger of Nahan Foundry Limited, Nahan with the Himachal Pradesh State Industrial Development Corporation Limited, Shimla, the Governor, Himachal Pradesh is also pleased to dissolve the Board of Directors of the Nahan Foundry Limited, Nahan so constituted vide notifications No.Ind.A(A)4-1/2000 dated:25-3-2008, 28-8-2009, 16-3-2011, 3-9-2011 and 1-12-2011.

By order,,  
Sd/-  
*Principal Secretary(Inds.).*

ANNEXURE-“A”

GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS

In the matter of Sections 391-394 of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of

M/s NAHAN FOUNDRY LIMITED

WITH

M/S HIMACHAL PRADESH STATE INDUSTRIAL DEVELOPMENT  
CORPORATION LIMITED

1. M/s. Nahan Foundry Limited, (NFL) a Government Company Under Section 617 of the Companies Act, 1956 and having Registered office at District Sirmour, Nahan-173001, Himachal Pradesh.  
.....Transferor Company
2. M/s H.P. State Industrial Development Corporation Ltd. (HPSIDC) a Government Company under Section 617 of the Companies Act, 1956 and having registered office at New Himrus Building, 4th & 5th floor, Cart Road, Shimla-171001 (Himachal Pradesh)  
.....Transferee Company

Present:

1. Shri P.D. Sharma, Consultant, HPSIDC Ltd
2. Shri P.K. Bali, Sr. Manager, HPSIDC Ltd
3. Shri Chetan Sharma, Sr. Manager, HPSIDC Ltd
4. Shri S.K. Sharma, Joint Director, HPSIDC Ltd

5. Shri Chaman Lal Goel, Nahan Foundry Ltd
6. Shri Raj Kumar, President, HPSIDC Employees Union
7. Shri S.R. Kalu, Gen Secy, HPSIDC Employees Union

GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS

(Hearing held on 08-04-2011)

Confirmation petitions have been submitted by M/s Nahan Foundry Limited and M/s Himachal Pradesh State Industrial Development Corporation Limited with respect to proposed Scheme of Amalgamation of M/s Nahan Foundry Limited (Transferor Company) with M/s Himachal Pradesh State Industrial Development Corporation Limited (Transferee Company) under Section 391-394 of the Companies Act, 1956 read with Government of India Notification GSR 238 dated: 2.2.1978.

2. In accordance with the Government of India, Notification GSR 238 dated 2.2.1978 read with Section 620 of the Companies Act, 1956 the Central Government has jurisdiction under the provisions of the Sections 391-394 of the said Act with respect to Government Companies. Therefore, the Central Government in the Ministry of Corporate Affairs has jurisdiction to hear and decide the present petitions.

3. The Transferor and Transferee Companies are Government Companies (State Government of Himachal Pradesh) and having common Chairman and Nominee Directors appointed by the State Government. The entire shareholdings of the companies are with the State Government. Both the companies have administrative synergy. The operations of both the companies can be ideally brought under single control so that a considerable saving and reduction in administrative expenses, overhead etc may be affected.

4. Department of Industries, Government of Himachal Pradesh has conveyed the approval vide their letter dated 23-09-2009 for the merger of Nahan Foundry Ltd with the H.P. State Industrial Development Corporation Limited.

5. The applications/petitions are supported by the affidavit of Shri Kanwal Arora, Company Secretary of Transferor Company and Shri Chetan Sharma, Sr. Manager of Transferee Company, who are duly authorized to file the applications/petitions in terms of the Board of Directors resolution passed on 29.3.2010 of both the companies.

6. Transferor Company M/s Nahan Foundry Ltd. was incorporated on 20-10-1952 as a Government company, under section 617 of the Companies Act, 1956. The Registered office of the company is situated at Nahan, District Sirmour, Himachal Pradesh.

7. Transferee Company viz. H.P. State Industrial Development Corporation Ltd was incorporated on 21.10.1986 as a Government company under section 617 of the Companies Act, 1956. The Registered office is situated at New Himrus Building, 4th & 5th floor, Cart Road, Shimla-171001 Himachal Pradesh.

8. Prior to the filing of above petitions both the companies have filed respective applications u/s 391-394 of the Companies Act, 1956 on 12.4.2010 praying (i) to dispense with the requirement of convening the meeting of the equity shareholders as the entire shareholdings of the companies are with the State Government and the shareholders have approved the scheme; (ii) to dispense with the requirement of meetings of secured and unsecured creditors of both the

companies as there are no creditors in both the companies. The Transferee Company furnished a list of Sundry creditors containing details of deposits from the contractors. The Transferee Company has also given an undertaking that it shall discharge all the debts and liabilities of the Transferor Company.

9. During the hearing held on 19.7.2010, the representatives of both the companies submitted that since both the companies are Government companies and the entire shareholdings are with the State Government and the shareholders have approved the scheme the requirement of holding meeting of equity share holders may be dispensed with. Further, the requirement of meetings of secured and unsecured creditors of both the companies may also be dispensed with, as there are no creditors in both the companies. The Transferee Company furnished a list of Sundry creditors containing details of deposits from the contractors.

10. After considering the facts and submissions made by the companies this Ministry vide order, dated 26.7.2010 issued directions that since both the companies are Government companies the requirement of meetings of equity share holders were dispensed with. The meetings of creditors (secured & unsecured) were also dispensed with, as both the companies do not have any creditors. Further, the Transferee Company has undertaken to make payment to sundry creditors who are contractors and hence the interest of the creditors would be protected. Further notice was issued to Regional Director (NR), Noida, Registrar of Companies Chandigarh and Official Liquidator attached to the High Court of Punjab & Harayana. Both the companies were directed to publish the notice of hearing by 4.8.2010 each in English, Hindi and vernacular newspaper having wide circulation. The next hearing was fixed for 3.9.2010 before the Joint secretary, Ministry of Corporate Affairs, Shasatri Bhawan, New Delhi. Both the companies were directed that confirmation petitions with affidavit confirming the fact of advertisement in newspapers should be submitted to this Ministry alongwith proof of advertisement.

11. Pursuant to this Ministry's order dated 26.7.2010 confirmation petitions have been filed by Nahan Foundry Ltd and Himachal Pradesh state Industrial Development Corporation Ltd on 25.8.2010 and 30.8.2010 respectively. The Transferee Company HPSIDC Ltd. has furnished affidavit alongwith proof of advertisements published in Indian Express, English Edition dated 3.8.2010; Dainik Bhaskar , Hindi Editioin dated 3.8.2010 and Punjab Kesari dated 4.8.2010. The Transferor Company Nahan Foundry Ltd. published the notice in Indian Express, Punjab Kesari and Dainik Bhaskar dated 4.8.2010. The companies have also furnished copies of petition alongwith all annexures to RD (NR), Noida, ROC, Chandigarh and OL, Chandigarh.

12. The Regional Director , Noida in his report dated 26.8.2010 has commented that para 3 of the scheme prove the Accounting Treatment in detail, but there is no mention whether the Petitioner Companies shall comply with the Accounting standard-14 issued by ICAI. Further, Clause 9 of the Scheme of Amalgamation provides that presently the staff, workmen and employees working with the Transferor Company are on deputation basis taken from the H.P. Government and on approval of the Scheme of Amalgamation of both the companies they will be repatriated to their respective parent Department .M/s Joshi Vishal & Associates, CA conducted the valuation of shares on the basis of Net Assets Value Method. While calculating the value of shares, the value of intangible assets has been ignored. Due to negative asset value the value of shares of Transferor Company is Nil. He has commented that in view of above the Ministry may decide the case on merits.

13. The Official Liquidator, Chandigarh in his report dated 24-8-2010 has reported that the Transferor Company has not obtained 'No Objection' to the scheme from its creditors however the shareholders have given their consent to the scheme. The Transferor Company is having litigation over its landed properties in the area of Sonapat, Ludhiana, Shahpur, Ambala, Bahadurgarh and

Raisi and it should be ensured that the same should not go against the scheme of amalgamation. The Transferor company has negative net assets value and the company have no permanent employees and all are on deputation. The Company has certain liabilities towards Income Tax for the years 2002-06 & 2007-08. He has submitted that the case may be decided on merits. In his report dated 15.10.2010, he has further reported that as per para 8 of the scheme one equity share of Rs.100 each of Transferee company for every shares of Rs. 100 each of the transferor company shall be allocated at part to the shareholders of the Transferor company.

14. During the hearing on 3.9.2010 both the companies have submitted that they have complied with the directions of this Ministry and have received objections from HPSIDC Employees Union, Nahan Foundry Mazdoor Panchayat and H.P. PWD & IPH State Workshop, Ministerial staff Union. They had also submitted that replies had been given to all the objectors.

15. Since both the companies have received objections and the objectors had requested to give them a chance of being heard, notices were issued to the objectors to attend the hearing on 22.9.2010 at 3.00 p.m. in the Ministry.

16. During the hearing held on 22.9.2010, representatives of the HPSIDC Employees Union requested that the Government of Himachal Pradesh may be made a party and notice be issued to them to produce record enabling them to cross examine the State representative as Board of Directors/ share holders. Further, they have stated that the scheme is not in public interest since the NFL is a loss making company and it will affect the employees of HPSIDC by depriving them of benefits after merger. They have also stated that all the properties, which are proposed to be transferred to HPSIDC, are under litigation in various courts for more than 40 years and it is unlikely to get ownership of these properties even after finalization of litigation. Further HPPWD/IPH has been shown as owner of the land at Nahan though it is shown in the record of NFL. The Vice-President of Nahan Foundry Mazdoor Panchayat and the President of HP PWD & IPH State Workshop informed that they could not attend the hearing on 22.9.2010 and requested to fix another date of hearing in October 2010.

17. The Ministry vide order dated 24.9.2010 directed the representatives of the union to hand over a copy of the submission to the applicant companies and to issue notice to the two objectors who could not attend the hearing on 22.9.2010 for a hearing on 5.10.2010.

18. Employees Union of the both the petitioner companies and HPPWD & IPH State Workshop (Ministerial staff union) objected to the merger of the companies on the ground that it is not in public interest and informed that the Unions shall be compelled to file writ against the merger in the Court of Law.

19. The Ministry had directed the Transferor Company to furnish clarification regarding inclusion of the property at Nahan in the balance sheet of the company though the said property had been stated to be transferred to the PWD Department. Further, the Ministry also directed to furnish a list of properties/assets to be transferred after the said amalgamation and latest balance sheet after recasting. The company had stated that they did not include the value of property at Nahan in its balance sheet from the financial year 1988-89 onwards as these premises had been converted into a workshop for use in Public Works Deptt. and Irrigation and Public Health Depart w.e.f. 1.10.1988. Accordingly, the assets having growth cost of Rs.2,24,947.00 had been transferred to HPPWD and IPH for a consideration of Rs.1.

20. Since the assets (including land and building) have already been transferred to PWD and IPH Department, another hearing was fixed for 8.4.2011 to have clarity on the issue.

21. During the hearing held on 8.4.2011, the representatives of HPSIDC Employees Union stated that the company shall only be taking over litigations and losses, which would seriously affect the reserves/surplus of the company and erode profitability of the corporation. They also stated that without the properties of NFL at Nahan being transferred to HPSIDC the merger of NFL would be meaningless. It was stated further, that the erstwhile princely State of Sirmour (H.P.) established the Transferor Company and subsequently the properties were taken over by the Government of India in 1952, later the ownership was transferred to Government of Himachal Pradesh in 1964. After a few years the company had started running into heavy losses and 12-13 properties were sold by the company. Now the company has one property measuring 930 sq. mt. at Raisi, Haridwar and other properties at Amala, Sonapat, Bahadurgarh are under litigation and the property at Ludhiana is not even in the name of the company. The Transferor Company mislead the Transferee Company by producing a faulty balance sheet.

22. After considering the facts and submissions, it appeared the balance sheet of NFL, which had been annexed with the merger scheme, had discrepancies and did not present the true and fair picture of the position of assets and liabilities as well as the carried forward losses etc. Specifically the status of land/assets of NFL at Nahan was not clear and their value had been depicted in successive balance sheets. In case some amounts were to be recovered from Government of Himachal Pradesh the same should have been shown under the head 'amounts recoverable'. There was also an unpaid liability on account of Income tax payable of approx. Rs. 50.00 lakhs, which was being contested, and in case the company lost the appeal this amount may stand enhanced because of accrued interest. The amount shown in the balance sheet as "recoverable" may not be recoverable but could be considered for writing off.

23. The Ministry vide order dated 5.5.2011 directed the Transferor company to recast the balance sheet of the company as on 31.3.2011 at the earliest with the consultation and eking clarifications from the Govt. of Himachal Pradesh and after submission of requisite details/documents and resolve the issue. It was further ordered that the amalgamation will be considered further only if the Government of Himachal Pradesh takes over and discharges the major liabilities as well as residual liabilities of NFL in order to smoothen the amalgamation process, considering the inaccurate and unreliable information provided.

24. The Transferor Company vide its letter dated 8.9.2011 submitted its balance sheet as on 31.3.2011 alongwith details of properties/current assets as directed by this Ministry vide order dated 5.5.2011.

25. Registrar of Companies, Delhi & Haryana was requested to examine the balance sheet of the Transferor Company and to furnish his comments about the viability of the merged entity if merger is carried out.

26. Registrar of Companies, Delhi & Haryana in his comments has stated that the amalgamated balance sheet of HPSIDC Ltd and the calculation of net assets value of Nahan Foundry Ltd are certified by M/s Joshi Vishal & Associates, CA from the books of accounts of the Companies and thus the accuracy of the same is being taken at face value as certified.

27. As per the Certificate, the net assets value of NFL is in the negative of Rs. 1,26,89,740.00 crore because of the accumulated losses of Rs. 4,77,03,740.00 crore as on 31-3-2010 which exceeds the equity share capital of Rs. 3,50,14,000.00. The total assets of NFL stands at Rs. 58,98,864.00 and current liabilities are Rs. 1,85,88,604.00.

28. The net effect of the proposed amalgamation of NFL with HPSIDC Ltd. is inclusion of accumulated losses of Rs. 1,26,89,740.00 in the amalgamated balance sheet of HPSIDC Ltd at

book value plus the burden to fight all legal battles for recovery of property or consideration thereof and the dues towards the employees of NFL. Therefore, the net assets of the merged entity shall be diluted by merger of NFL to the extent of negative net asset value of NFL.

29. He has also reported that on scrutiny of balance sheet as at 31-3-2011 of Nahan Foundry Limited, the company is carrying accumulated losses of Rs. 4,76,37,024.00 as against share capital of Rs. 3,50,14,000.00 resulting into negative net worth of Rs. 1,26,23,024.00 at book value. Thus there has been a profit of Rs. 66,716.00 due to profit during the year. This is due to sale of land and building as disclosed in the fixed assets schedule attached to the balance sheet. However, neither the standalone balance sheet as at 31-3-3011 of M/s HPSIDC Ltd. nor a certificate from a Chartered Accountant for amalgamated balance sheet at 31-3-3011 has been submitted. The effect of transfer of Nahan land and building at book value to General Administration Department of HP without calling quotation is to be considered. Further, he has stated that no comments are being offered on the reasons of merger, the statutory requirements of seeking no objection from the concerned stakeholders including employees being a matter of records and merits of the case.

30. It is further observed that in the instant case, the transferor company has no employees currently as they have all been absorbed much earlier as government employees. The ROC's report shows a negative net asset of only Rs. 1.26 crores as against positive net assets of Rs. 51.42 crores of HPSIDC, the transferee company. Moreover the transferor company has huge landed property, though under litigation. The contention that the transferee company will become a sick company after merger is misplaced, as the possibility is remote, keeping in view both the health of the transferee company as well as the valuable land assets held by the transferor company. Since both are government companies, bearing cost of litigation should not be a problem. In view of the above, the interest of the employees of the transferee company will not be affected.

31. For considering the proposal for amalgamation, all the procedures as required under the provisions of Companies Act, 1956 read with the Companies (Court) Rules, 1959 were followed and it was ensured that transparency is maintained during the proceedings. Sufficient opportunities were provided to all concerned by way of giving direction to the petitioner/applicant companies for publishing the notice of scheme or supplying copies of the scheme to any one who required.

32. The said scheme does not violate any statutory provisions. The validity of all the actions, proceedings and obligations of the transferor and transferee companies continue even after the implementation of the scheme. Therefore no person holding any claim or right against the Transferor or Transferee Companies prior to the scheme coming into effect would be prejudicially affected even after the implementations of the Scheme.

33. In the aforesaid facts and circumstances and having regard to the averments made in the petitions and during the course of hearing, submission made by the applicant companies and further considering the reports of the Regional Director, Registrar of Companies and Official Liquidator, the scheme of amalgamation of the Transferor company with the Transferee company is found to be in order.

34. Now, therefore, the sanction of the Central Government is hereby accorded to the Scheme of Amalgamation (Annexure A) of M/s Nahan Foundry Ltd (Transferor company) with M/s Himachal Pradesh State Industrial Development Corporation Ltd u/s 391(2) of the Companies Act, 1956 read with section 394 of the Act. The said scheme shall be binding on the shareholders and creditors of the Transferor Company and Transferee Company and all concerned with effect from 1.4.2009 being the appointed date under the said scheme.

35. Consequent to the amalgamation of the companies and the scheme becoming effective:-

- (a) The Transferor company shall stand dissolved without the process of winding up;
- (b) All the property, rights and powers of Transferor company specified in Annexure-II hereto and all the other property and rights and powers of Transferor company shall be transferred without further act or deed to the Transferee company in accordance with the Scheme, and accordingly the same shall, pursuant to Section 394(2) of the Act be transferred to and vest in the Transferee company for all the estate and interest of Transferor company therein;
- (c) All the liabilities and duties of Transferor company shall be transferred without further act or deed to Transferee company in accordance with the scheme and accordingly, the same shall, pursuant to section 394(2) of the Act be transferred to and become the liabilities and duties of Transferee company.
- (d) All proceedings now pending by or against Transferor company shall be continued by or against Transferee Company; and
- (e) The petitioner companies shall, subject to the provisions of the Companies Act, 1956 apply Accounting Standard(AS) 14 as laid down in the Accounting Standards Rules, 2006 notified by the Government of India.

It is further ordered that the parties to the scheme or other persons interested in the scheme shall be at liberty to apply to the Ministry of Corporate Affairs, Government of India for any direction that may be necessary in regard to working of the said scheme.

It is further ordered that Transferor Company and the Transferee Company do file with the Registrar of Companies, Shimla a certified copy of this order within 30 days of the receipt the same. A copy of the order be made available to the parties concerned.

#### SCHEDULE

1. Copy of the Scheme of Amalgamation being annexure to the petition is annexed as Annexure-I.
2. Details of properties of Transferor Company is annexed hereto as Annexure II.

Place : New Delhi.

Date : 23<sup>rd</sup> February 2012.

Sd/-  
(RENUKA KUMAR),  
*Joint Secretary to the Govt. of India.*

**SCHEME OF AMALGAMATION****OF****NAHAN FOUNDRY LIMITED****WITH****H.P. STATE INDUSTRIAL DEVELOPMENT  
CORPORATION LIMITED**

**This Scheme of amalgamation provides for the amalgamation of NAHAN FOUNDRY LIMITED, a wholly owned Himachal Pradesh State Government Company within the meaning of Section 617 of the Companies Act, 1956 with H.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED another wholly owned Himachal Pradesh State Government Company within the meaning of Section 617 of the Companies Act, 1956, with the Approval of the Central Government, Ministry of Corporate Affairs, pursuant to Section 391-394 and other applicable provisions if any of the Companies Act, 1956.**

**SCHEME OF AMALGAMATION****OF****NAHAN FOUNDRY LIMITED****WITH****H.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED****1. DEFINITIONS**

In this scheme, unless inconsistent with the subject or context, the following expressions shall have the following meanings.

(a) **“Act”** means the Companies Act, 1956 and include any statutory modifications or amendments thereof for the time being in force.

(b) **“The Appointed Date”** means the 1<sup>st</sup> day of April, 2009 or as may be approved by the appropriate authority.

(c) **“The Transferor Company”** means Nahan Foundry Limited (NFL)-a Government Company U/S 617 of the Companies Act 1956 and having its Registered Office at Nahan, District Sirmour (Himachal Pradesh). The Company is wholly owned by H.P. State Government.

(d) **“The Transferee Company”** means H.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED (HPSIDC), a Government Company U/S 617 of the Companies Act 1956 and having its Registered Office at New Himrus Building, 4<sup>th</sup> & 5<sup>th</sup> FLOOR, Cart Road, Shimla-171001. The Company is wholly owned by H.P. State Government.

(e) **“The Effective Date”** means the day on which the last of the sanctions/permissions/approvals specified in the scheme shall have been obtained and certified copy of the orders filed with the Registrar of Companies, Chandigarh.

(f) **“Scheme” or “the Scheme” or “this scheme”** means this Scheme of amalgamation in its present form submitted to the Central Government or any other appropriate authority or with any modification(s) made under Clauses 11 and 15 of this Scheme.

## 2. DATE OF TAKING EFFECT AND OPERATIVE DATE

The Scheme set out herein in its present form or with any modification(s) approved or imposed or directed by the Central Government or any other appropriate authority shall be operative from the Appointed Date but shall be effective from the Effective Date.

## 3. SHARE CAPITAL

The share capital of NFL as at 31.3.2009 is as under:

### (A) Authorised Share Capital

40000 Equity shares of Rs. 1000/- each.	Rs. 40,000,000.00
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### (B) Issued, Subscribed and Paid-up

38700 Equity shares of Rs. 1000/- each.	Rs. 38,700,000.00
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Less Reduction of share Capital	
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3686 Equity shares of Rs. 1000/- each.	Rs. 03,686,000.00
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The share capital of HPSIDC as at 31.03.2009 is as under :

### (A) Authorised Share Capital

5000000 Equity shares of Rs.100/- each.	Rs. 500,000,000.00
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### (B) Issued, Subscribed and Paid-up

2959399 Equity shares of Rs. 100/- each.	Rs. 295,939,900.00
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## (4) VESTING OF UNDERTAKING

(4.1) With effect from the Appointed date, and subject to the provisions of this Scheme in relation to the mode of transfer and vesting the undertaking and the entire business and all the movable and immovable properties including fixed assets, capital works in progress, current assets, investments, powers, authorities, allotments, approvals and consent, licences, registrations, contracts engagements, arrangements, rights, title, interest, benefits and advantages of whatsoever nature and where so ever situated belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company, including but without being limited to all, trade marks, trade names and other property rights of any nature whatsoever and licences in respect thereof, privileges, liberties, easements, advantages, exemptions, benefits, leases, leasehold, right, tenancy rights, ownership of flats, quota rights, permits approvals, authorizations, right to sue and avail of telephones, telexes, facsimile connections and installations, utilities, electricity and other services, reserves, deposits, provisions, funds, benefit of all

agreements and all other interests arising to the Transferor Company thereafter collectively referred to as the said assets shall be transferred to and vested in and or deemed to be transferred to and vested in the Transferee Company pursuant to the provisions of Section 391-394 of the said Act for all the estate, right, title and interest of the Transferor Company therein.

(4.2) The said assets shall without any further act, instrument, deed, matter or thing, be transferred to and vested in the Transferee Company on the Appointed Date by a vesting order made pursuant to the provisions of Section 391-394 of the said Act and such transfer and vesting shall be deemed to have taken place at the location of the Registers, Office of the Transferee Company.

(4.3) With effect from the Appointed date, all debts, liabilities, duties and obligations of the Transferor Company (hereinafter referred to as the said liabilities) shall also be and stand transferred or deemed to be transferred, without any further act, instrument or deed to the Transferee Company, as to become as and from the Appointed date, the debts, liabilities, duties and obligations of the Transferee Company.

(4.4) The transfer of the said assets and the said liabilities of the Transferor Company to the Transferee Company and the continuance of all the contracts or proceedings by or against the Transferee Company shall not affect any contract or proceedings relating to the said assets or the said liabilities undertaken by or instituted by or against the Transferor Company on/after the Appointed date.

## **5. BUSINESS AND PROPERTY IN TRUST FOR HPSIDC:**

With effect from the Appointed date, the Transferor Company:

(5.1) shall carry on and be deemed to have carried on all its business and activities and shall be deemed to have held and stood possessed all the said assets for and on account of and in trust for the Transferee Company.

(5.2) shall for all purposes treat the profits or incomes or expenditure or losses arising or incurred by it to be the profits or incomes or expenditures or losses of the Transferee Company as the case may be.

(5.3) shall not vary the terms and conditions of the employment of the employees except in the ordinary course of business.

(5.4) shall not without the written consent of the Transferee Company, undertake any new business.

## **6. LEGAL PROCEEDINGS:**

All suits, actions and proceedings of whatsoever nature by or against the Transferor Company shall be continued and be enforced by or against the Transferee Company as effectual as if the same had been pending and/or arising against the Transferee Company.

## **7. CONTRACTS, DEEDS ETC:**

Subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, arrangements and other instruments of whatsoever nature to which the Transferor Company is a party or to the benefits of which the Transferor Company may be eligible and which are subsisting

or having effect shall be in full force and effect against or in favour of the Transferee Company as the case may be and may be enforced as fully and effectively as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary thereto.

## **8. DISCHARGE OF CONSIDERATION:**

(8.1) Upon the scheme becoming operative and in consideration of the amalgamation HPSIDC shall not allot any equity shares to the shareholders of NFL whose name appears in the Register of Members of NFL, due to Negative NAV as worked out by the Experts on Book value basis, however, as and when the property of the Transferor Company so acquired by the Transferee Company are sold, the profit if any so earned out of the sale of the same shall be shared equally by the H.P. State Government and the Transferee Company.

(8.2) The Equity shares if any to be issued and allotted in terms hereof will be subject to the Memorandum and Articles of Association of the Transferee Company.

(8.3) The approval of this scheme by the shareholders of the Transferee Company shall be deemed to be due compliance of the provisions of Section 81(1A) and other relevant and applicable provision of the Act for the issue and allotment of any Equity Shares by HPSIDC to the share holders of NFL as provided in this Scheme.

## **9. STAFF, WORKMEN & EMPLOYEES:**

Presently, the staff, workmen and employees working with the Transferor Company are on deputation basis taken from the H.P. Government and on Approval of the Scheme of amalgamation of both the Companies by the Central Government, they will be repatriated to their respective parent Departments.

## **10. ACCOUNTING TREATMENT IN THE BOOKS OF HPSIDC:**

On the Scheme becoming effective, the Transferee Company shall account for the merger in its books of accounts as under:

- (a) The face value of the Equity shares of NFL pursuant to clause 08 above will be recorded as Nil.
- (b) All the assets and liabilities as on the Appointed Date, recorded in the books of accounts of the Transferor Company shall be recorded by the Transferee Company at their book values as appearing in the books of the Transferor Company.
- (c) Notwithstanding the above the Managing Director of the Transferee Company in consultation with auditors of the Company is authorized to account for the assets and liabilities take over from the Transferor Company in appropriate manner whatsoever as may be deemed fit.

## **11. MODIFICATIONS/AMENDMENTS TO THE SCHEME:**

The Transferor Company (by its Board of Directors or any of its Committees or Managing Director or any person(s) duly authorized by the Board in that regard and the Transferee Company (by its Board of Directors or any of its Committees or Managing Director or any person(s) duly authorized by the Board in that regard) may from time to time make or assent to any modifications or amendments to this scheme or to any conditions or limitations which the Central Government

and/ or any authority under law may require to approve of or may impose to settle all doubts, question of interpretation or difficulties that may arise for carrying out or in implementation of the Scheme and to do and execute all acts, deeds and things that may be required for putting the Scheme into effect and may give all such directions as are necessary in this regard.

## **12. GENERAL TERMS:**

It is clarified that all taxes payable by the Transferor Company relating to the transferred undertaking, from the Appointed Date onwards including all or any refunds and claims shall, for all purposes, be treated as the Tax liabilities or refund or claims of the Transferee Company. Accordingly, upon the Scheme becoming effective, the Transferee Company is expressly permitted to revise VAT and Sales tax, Excise and other Tax returns and to claim refunds/credits, of any, wherever deemed necessary, pursuant to the provisions of the Scheme.

## **13. CONDITIONALITY OF THE SCHEME:**

The Scheme is specifically subject to:

- (a) Approval of the Scheme by the Boards and Members of the Transferor and the Transferee Companies.
- (b) Both the Companies making and application U/S 391-394 of the Act to Central Government, Ministry of Corporate Affairs for sanction of the scheme and necessary order under U/s 391-394 of the said Act being obtained
- (c) Certified or authenticated copy of the Order of the Central Government sanctioning the Scheme being filed with the Registrar of Companies Chandigarh by the Transferor and the Transferee Companies.

## **14. WINDING UP:**

On the Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up.

## **15. EFFECT OF NON-RECEIPT OF APPROVAL/SANCTIONS:**

In the event of the Scheme not being sanctioned by the Central a Government Ministry of Corporate Affairs or orders not being passed as aforesaid, the Scheme of Amalgamation will become null & void and shall be of no effect. However, the Transferor and transferee Company may represent and approach the Central Government. Ministry of Corporate Affairs to review its decision.

## **16. COSTS, CHARGES & EXPENSES:**

All costs, charges and expenses of the Transferor Company and Transferee Company respectively in relation to or in connection with this Scheme and carrying out and completing the terms and provisions of this Scheme and /or incidental to the completion of amalgamation of the undertaking of the Transferor company in pursuance of this Scheme shall be borne and paid by the Transferee Company alone.

**DETAIL OF PROPERTY OF NAHAN FOUNDRY LIMITED**

Name of Property	Detail of Area (in Sq. Yards)	Property Location	Whether in ownership/ possession as per revenue records.	Present possession with whom	Book Value as per balance sheet (in Rs.)	Market Value as on 31/03/2011	Whether property is under litigation	Grounds of the case	Name of the court where the case is pending	Present status of the Case
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
Bahadurgarh (Haryana)	3007	Near Railway Station	Ownership of NFL.	With Haryana Police	6891.31	Rs. 2.00 Crores	Yes	Mutation is not in favour of NFL	Punjab & Haryana High Court Chandigarh	Case has been relisted for early hearing
Sonepat (Haryana)	4072	Civil Lines	Ownership of NFL	With NFL	10625.67	Rs. 7.00 Crores	Yes	Property belong to custodian i.e. Haryana Govt.	Civil Court, Sonepat	Stay has been given in favour of NFL, case is pending
Ludhiana (Punjab)	4072	Civil Lines	Ownership with Sh. Joginder Singh & Others	With NFL	15130.99	Rs. 80.00 to 100 Crores	Yes	Appeals are pending in Distt. Court, Ludhiana & Mutation case of property with SDM(East) Ludiana	Distt. Court Ludhiana	Appeal/ Hearing are to be decided by the Court.
Shahpur (U.P.)	1190.07	Near Anaj Mandi	Ownership & Possession with NFL	With NFL	3584.33	Rs. 25.00 Lacs.	Yes	Legal heirs of deceased owner has filed civil court case against NFL	Civil Court, Muzzefernagar	Final date of argument has been fixed.
Raisi (U.K.)	1112	Near Railway Station	Ownership & possession with NFL	With NFL	219	Rs. 11.20 Lacs	No.	-	-	-
Ambala (Haryana)	1972	-	Compensation case with M.C.	M.C. Ambala	-	As claim of compensation	Yes	Excess area was acquired by M.C.	-	Legal Notice u/s 80 CPC has been served. Case to be filed.

**NAHAN FOUNDRY LTD. NAHAN****Current Assets, loan & Advances****Schedule D. (Balance sheet as at 31-3-2011.)**

1. Amount recoverable from GAD HP	Rs. 3,13,750
2. Amount recoverable from HPPWD & IPH State Workshop(N.F.) Nahana	28,42,376
3. Amount recoverable from IPH Deptt. H.P.	9,95,414
Cash in hand.	1223
Bank Balances	16,15,959
	<hr/> 56,68,722
Loans & Advances	28,502
	<hr/> 5697224.00

## युवा सेवाएं एवं खेल विभाग

## अधिसूचना

शिमला-2 17 अप्रैल, 2012

**संख्या वाई0 एस0 एस0-बी(1)4/2008.**—हिमाचल प्रदेश सरकार राज्यपाल, भारत के संविधान के अनुच्छेद-309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश युवा सेवाएं एवं खेल विभाग, अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान, मनाली में मुख्य फार्मासिस्ट, वर्ग-III (अराजपत्रित) अलिपिक वर्गीय सेवाएं के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-“क” के अनुसार भर्ती और प्रोन्नति नियम बनाती है, अर्थात:-

1. **संक्षिप्त नाम और प्रारम्भ.**—(1) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश युवा सेवाएं एवं सहबद्ध खेल संस्थान, मनाली, मुख्य फार्मासिस्ट, वर्ग-III (अराजपत्रित) अलिपिक वर्गीय सेवाएं भर्ती और प्रोन्नति नियम, 2012 है ।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे ।

आदेश द्वारा,  
हस्ता0/—  
प्रधान सचिव (युवा सेवाएं एवं खेल)।

हिमाचल प्रदेश, युवा सेवाएं एवं खेल विभाग, अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान, मनाली, मुख्य फार्मासिस्ट, वर्ग-III (अराजपत्रित) के पद के भर्ती और प्रोन्नति नियम

1. **पद का नाम.**—मुख्य फार्मासिस्ट
2. **पदों की संख्या.**—1 (एक)
3. **वर्गीकरण.**—वर्ग-III (अराजपत्रित) अलिपिकीय वर्गीय सेवाएं
4. **वेतनमान.**— i) नियमित पद धारियों के लिए वेतनमान :  
पे बैंड 10,300/— रुपये जमा 3800/— रुपये ग्रेड पे।  
ii) **संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियां :**  
स्तम्भ 15—क में दिए गए ब्यौरे के अनुसार 14,100/—रुपये प्रति मास ।
5. **चयन पद अथवा अचयन पद.**—लागू नहीं ।
6. **सीधी भर्ती के लिए आयु .**—18 से 45 वर्ष :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा, तदर्थ या संविदा के आधार पर नियुक्ति किए गए व्यक्तियों सहित पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी, इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और कि अनुसूचित जातियों / अनुसूचित जनजातियों तथा अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेश (आदेशों) के अधीन अनुज्ञेय है :

परन्तु यह और कि यदि तदर्थ आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह और है कि अनुसूचित जातियों/अनुसूचित जनजातियों तथा अन्य वर्गों के व्यक्तियों के लिए ऊपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेशों के अधीन अनुज्ञेय है :

परन्तु यह और भी कि पब्लिक सैक्टर/ निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, ऐसे पब्लिक सैक्टर /निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों में आमेलन से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती आयु की सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सैक्टर, निगमों तथा स्वायत्त निकायों के ऐसे कर्मचारिवृन्द को नहीं दी जाएगी, जो पश्चात्पूर्वी ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/ हैं और उन पब्लिक सैक्टर निगमों/स्वायत्त निकायों का प्रारम्भिक गठन के पश्चात् ऐसे निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/किए गए थे।

(1) सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिन से की जाएगी, जिसमें आवेदन आमंत्रित करने के लिए, यथास्थिति, पद विज्ञापितया नियोजनालयों को अधिसूचित किया गया है।

(2) अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल किया जा सकेगा।

## 7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं :

### (क) अनिवार्य अर्हताएं :

- i) किसी मान्यता प्राप्त विश्वविद्यालय से स्नातक की उपाधि या इसके समतुल्य सहित, सम्बन्धित क्षेत्र में दो वर्ष के अनुभव के साथ मान्यता प्राप्त विश्वविद्यालय/संस्था से फार्मसी में डिप्लोमा।

या

किसी मान्यता प्राप्त विश्वविद्यालय /संस्था से फार्मसी में स्नातक की उपाधि।

- ii) राज्य/केन्द्र सरकार की फार्मसी परिषद् में रजिस्ट्रीकृत होना चाहिए।

### (ख) वांछनीय अर्हताएं :

- i) मुख्य फार्मासिस्ट के रूप में फार्मासिस्ट कार्य करने का तीन वर्ष का अनुभव तथा उच्च तृतीय स्थानों में कार्य करने हेतु अभिरुचि रखता हो।
- ii) हिमाचल प्रदेश की रुढ़ियों रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किये जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएँ प्रोन्नत व्यक्तियों की दशा में लागू होंगी या नहीं :

आयु : लागू नहीं।

शैक्षिक अर्हता : लागू नहीं।

9. परिवीक्षा की अवधि, यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा, जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दें।

10. भर्ती की पद्धति—भर्ती सीधी होगी या प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पदों की प्रतिशतता.—शत प्रतिशत सीधी भर्ती द्वारा, यथास्थिति, नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा। ऐसा न होने पर सैंकेन्डमैन्ट आधार पर। संविदा पर नियुक्ति किए गए कर्मचारी स्तम्भ 15—क में दी गई उपलब्धियाँ प्राप्त करेंगे और तथाकथित स्तम्भ में यथा विनिर्दिष्ट सेवा शर्तों द्वारा विनियमित होंगे।

11. प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण की दशा में श्रेणियाँ, जिनसे प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण किया जाएगा.—हिमाचल प्रदेश सरकार के अन्य विभागों में इस पद के समरूप वेतनमान में कार्यरत पदधारियों में से सैंकेन्डमैन्ट आधार पर।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो, उसकी संरचना.—लागू नहीं।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा.—जैसे विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा। यदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यवहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम इत्यादि, यथास्थिति, आयोग या अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा।

15—क संविदा नियुक्ति द्वारा पद पर नियुक्ति के लिए चयन.—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियों नीचे दिए गए निबन्धनों और शर्तों के अधीन की जाएगी :—

## (I) संकल्पना :

(क) इस पॉलिसी के अधीन अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान, मनाली हिमाचल प्रदेश में मुख्य फार्मासिस्ट को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए रखा जाएगा, जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा :

परन्तु संविदा की अवधि में वर्षानुवर्ष आधार पर विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण—पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण उस वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी।

(ख) पद का हिमाचल प्रदेश अधीनस्थ सेवाएँ चयन बोर्ड के कार्य क्षेत्र में आना : निदेशक, अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान मनाली हिमाचल प्रदेश में रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात् अध्यक्ष को, सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएँ चयन बोर्ड, हमीरपुर के समक्ष रखेगा।

(ग) चयन इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा।

**(II) संविदात्मक उपलब्धियाँ.**—संविदा के आधार पर नियुक्त मुख्य फार्मासिस्ट को 14,100/-रुपए की समेकित नियत संविदात्मक रकम (जो पे बैंड जमा ग्रेड पे के न्यूनतम के बराबर होगी) प्रतिमास संदत्त की जाएगी। यदि संविदा में एक वर्ष से अधिक की बढौतरी की जाती है, तो पश्चात्वर्ती वर्ष (वर्षों) के लिए संविदात्मक उपलब्धियों में 430/-रुपए की रकम (पद के पे बैंड जमा ग्रेड पे के न्यूनतम का तीन प्रतिशत) वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी।

**(III) नियुक्ति/अनुशासन प्राधिकारी.**—निदेशक, अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान, मनाली, हिमाचल प्रदेश नियुक्ति और अनुशासन प्राधिकारी होगा।

**(IV) चयन प्रक्रिया.**—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा और प्रयोगात्मक परीक्षा के आधार पर और यदि यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग तथा अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समाचीन समझे, तो लिखित परीक्षा के या व्यवहारिक परीक्षा के आधार पर किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि सम्बद्ध भर्ती अभिकरण अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएँ चयन बोर्ड, हमीरपुर द्वारा अवधारित किया जाएगा।

**(V) संविदात्मक नियुक्तियों के लिए चयन समिति.**—जैसी सम्बद्ध भर्ती अभिकरण, अर्थात् हिमाचल प्रदेश अधीनस्थ सेवाएँ चयन बोर्ड, हमीरपुर द्वारा समय-समय पर गठित की जाए।

**(VI) करार.**—अभ्यर्थी को, चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध— “ख” के अनुसार करार हस्ताक्षरित करना होगा।

### **(VII) निबन्धन और शर्तें.—**

(क) संविदा पर नियुक्त व्यक्ति को 14,100/-रुपए की नियत संविदात्मक रकम (जो पे बैंड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी। संविदा पर नियुक्त व्यक्ति आगे बढ़ाये गए वर्ष/ वर्षों के लिए संविदात्मक रकम में 430/-रुपए (पद के पे बैंड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वार्षिक वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएँ जैसे वरिष्ठ/ चयन वेतनमान आदि नहीं दिया जाएगा।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता तो नियुक्ति समाप्त किए जाने के लिए दायी होगी।

(ग) संविदा पर नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

- (घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यवसान (समापन) हो जाएगा। संविदा पर नियुक्त व्यक्ति कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।
- (ङ) संविदा पर नियुक्त व्यक्ति जिसने तैनाती के स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया हो, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।
- (च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रकृत चिकित्सा व्यवसायी से अपना आरोग्यता प्रमाण पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक समय की गर्भवस्था वाली महिला अभ्यर्थी प्रसव होने तक, अस्थायी तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा सेवा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।
- (छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर जैसा नियमित कर्मचारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/ दैनिक भत्ते का हकदार होगा।
- (ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध एफ0आर0-एस0 आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे।

**16. आरक्षण.**—सेवा में नियुक्ति हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बाबत जारी किये गये आदेशों के अधीन होगी।

**17. विभागीय परीक्षा .**—लागू नहीं।

**18. शिथिल करने की शक्ति.**—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समाचीन है, वहां वह कारणों को लिखित में अभिलिखित करके हिमाचल प्रदेश लोक सेवा आयोग के परामर्श द्वारा इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बाबत, शिथिल कर सकेगी।

उपाबन्ध—“क”

मुख्य फार्मासिस्ट और हिमाचल प्रदेश सरकार के मध्य निदेशक, अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान, मनाली के माध्यम से निष्पादित की जाने वाली संविदा करार का प्रारूप।

यह करार श्री/श्रीमति.....पुत्र/पुत्री श्री.....निवासी..... संविदा पर नियुक्त व्यक्ति (जिसे इसके पश्चात) “प्रथम पक्षकार” कहा गया है और हिमाचल प्रदेश के राज्यपाल के मध्य अटल बिहारी वाजपेयी पर्वतारोहण एवं सहबद्ध खेल संस्थान, मनाली के माध्यम से (नियुक्ति प्राधिकारी का नाम) के (जिसे इसमें इसके पश्चात “द्वितीय पक्षकार” कहा गया है) के मध्य आज तारीख.....को किया गया।

“द्वितीय पक्षकार” ने उपरोक्त प्रथम पक्षकार को लगाया और प्रथम पक्षकार ने मुख्य फार्मासिस्ट के रूप में संविदा आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने की सहमति दी है:

1. यह कि प्रथम पक्षकार..... के रूप में..... से प्रारम्भ होने और.....को समाप्त होने वाले दिन तक, एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में मुख्य

फार्मासिस्ट के रूप में रहेगा। यह विनिर्दिष्ट रूप से उल्लेखित किया गया है और दोनों पक्षकारों द्वारा करार किया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा आखिरी कार्य दिवस अर्थात्..... दिन को स्वयमेव ही पर्यवसित(समाप्त) समझी जाएगी और सूचना नोटिस आवश्यक नहीं होगा:

परन्तु संविदा की अवधि में वर्षानुवर्ष आधार परविस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण उस वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि नवीकृत/विस्तारित की जाएगी।

2. प्रथम पक्षकार का संविदात्मक रकम 14,100/—रुपये प्रतिमास होगी।

3. प्रथम पक्षकार की सेवा पूर्णतया अस्थायी आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य /आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस रिक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को लगाया गया है तो नियुक्ति पर्यवसित (समाप्त) की जाने के लिए दायी होगी।

4. संविदा पर नियुक्त मुख्य फार्मासिस्ट एक मास की सेवा पूरी करने के पश्चात एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदा पर नियुक्त मुख्य फार्मासिस्ट को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।

5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा। संविदा पर नियुक्त मुख्य फार्मासिस्ट कर्त्तव्य से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

6. संविदा पर नियुक्त कर्मचारी जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

7. चयनित अभ्यर्थी को सरकारी /रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्यता प्रमाण पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भवस्था प्रसव होने तक उसे अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/ व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।

8. संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौर पर जाना अपेक्षित हो, तो वह उसी दर पर जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/ होगी।

9. संविदा पर नियुक्त व्यक्ति(यों) को सामूहिक बीमा योजना के साथ-साथ इ0पी0एफ0/ जी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिये हैं।

साक्षियों की उपस्थिति में

1.....

(नाम व पूरा पता)

2.....

.....

(नाम व पूरा पता)

प्रथम पक्षकार के हस्ताक्षर

साक्षियों की उपस्थिति में

1.....

.....

(नाम व पूरा पता)

2.....

.....

(नाम व पूरा पता)

द्वितीय पक्षकार के हस्ताक्षर

*[Authoritative English Text of this Department notification No.YSS-B(1)-4/2008 dated 17-04-2012 as required under clause (3) of Article-348 of Constitution of India.]*

## YOUTH SERVICES AND SPORTS DEPARTMENT

### NOTIFICATION

*Shimla-2, the 17th April, 2012*

**No.YSS-B(1)-4/2008.**—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with Himachal Pradesh Public Service Commission, is pleased to make the Recruitment and Promotion Rules for the post of Chief Pharmacist, Class-III (Non-Gazetted) Non-ministerial Services, in the Department of Youth Services and Sports, Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports Manali as per Annexure-“A” attached to this notification, namely :-

**1. Short Title and Commencement.**—(I) These rules may be called the Himachal Pradesh Youth Services & Sports Department, Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports Manali, Chief Pharmacist, Class-III (Non-Gazetted), Non-Ministerial Services, Recruitment and Promotion Rules, 2012.

(2) These Rules shall come into force from the dated of its publication in the Rajpatra, Himachal Pradesh.

By order,

Sd/-

Principal Secretary.

ANNEXURE-“A”

**RECRUITMENT AND PROMOTION RULES FOR THE POST OF CHIEF PHARMACIST (CLASS-III-NON-GAZETTED), IN THE DEPARTMENT OF YOUTH SERVICES AND SPORTS, ATAL BIHARI VAJPAYEE INSTITUTE OF MOUNTAINEERING AND ALLIED SPORTS, MANALI, HIMACHAL PRADESH.**

**1. Name of the Post.**—Chief Pharmacist

**2. Number of Posts.**—01 (One)

**3. Classification : Class-III (Non-Gazetted) (Non- Ministerial Services)****4. Scale of Pay : (i) Pay Scale for regular incumbent :-**  
Pay Band ₹, 10300--34800 + ₹, 3800/-  
Grade Pay.

(ii) *Emoluments for contract employees:* ₹, 14,100/- (as per details given in Col No.15-A).

**5. Whether “Selection” post or “Non-Selection” Post : Not applicable.****6. Age for direct recruitment : Between 18 and 45 years.**

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on *ad hoc* or on contract basis;

Provided further that if a candidates appointed on *ad hoc* basis had become over age on the date. When, he was appointed as such he shall not be eligible for any relaxation in the prescribed age limit by virtue of his *ad hoc* or contract appointment;

Provided further that upper age limit is relax able for Scheduled Castes/Scheduled Tribes/other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Governments servants before absorption in Public Sector/Corporations/Autonomous Bodies shall be allowed, age concession in direct recruitment as admissible to Government Servants. This concession will not however, be admissible to such staff of the Public Sector Corporations/Autonomous Bodies and who were/are subsequently appointed by such corporations/Autonomous Bodies who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies.

- (1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is /are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.
- (2) Age and experience in the case of direct recruitment relax able at the discretion of the Himachal Pradesh Public Service Commission in case the candidate is other-wise well qualified.

**7. Minimum educational and other qualifications required for direct recruit(s).****(a) ESSENTIAL QUALIFICATION(s)**

- (i) Bachelors Degree or its equivalent from recognized University with Diploma in Pharmacy from recognized University/Institution followed by two years experience in the related field.

OR

Bachelors Degree in Pharmacy from recognized University/Institution.

- (ii) Must be registered with the Pharmacy Council of the State/Central Govt.

**(b) DESIRABLE QUALIFICATION(s):**

- (i) Three years working experience as Chief Pharmacist and should have aptitude for working in High Altitude.
- (ii) Knowledge of customs, manner and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

**8. Whether age and educational qualification(s) prescribed for will apply in the case of promotee(s):**

**Age.**—Not applicable.

**Educational Qualification.**—Not applicable direct recruit(s).

**9. Period of probation, if any.**—Two years' subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

**10. Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and percentage of post(s) to be filled in by various methods.**—100% by direct recruitment on regular basis or by recruitment on contract basis, as the case may be, failing which on secondment basis. The contract employees will get emoluments as given in Column 15-A and will be governed by service conditions as specified in the said column.

**11. In case of recruitment by Promotion, deputation, transfer, grades from which promotion/deputation/transfer is to be made.**—On secondment basis from amongst the incumbents of this post working in the identical pay scales from Himachal Pradesh Government Departments.

**12. If Departmental Promotion Committee exists, what is its Composition ?.**—Not Applicable.

**13. Circumstances under which the H.P.P.S.C. is to be consulted in making recruitments.**—As required under the law.

**14. Essential requirement for a any direct recruitment.**—A candidate for appointment to any service or post must be a citizen of India.

**15. Selection for appointment to post by direct recruitment.**—Selection for appointment to the post in the Case of Direct Recruitment shall be made on the basis of viva voce test, if H.P. Public Service Commission or other recruiting authority, as the case may be, so consider necessary or expedient, by a written test or practical test, the standard/syllabus etc .of which will be determined by the Commission OR other recruitment authority, as the case may be.

**15-A Selection for appointment to the post by contract appointment.**—Notwithstanding anything contained in these Rules, contract appointments to the post will be made subject to the terms and conditions given below:-

**(I) CONCEPT.**—(a) Under this policy the Chief Pharmacist in the ABV Institute of Mountaineering & Allied Sports, Manali H.P., Department of Youth Services & Sports will be engaged on contract basis initially for one year, which may be extendable on year to year basis.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed/extended.

**(b) POSTS FALLS WITH IN THE PREVIEW OF HPSSSB.**—The Director, ABV Institute of Mountaineering & Allied Sports, Manali H.P. after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency *i.e.* H.P. Subordinate Service Selection Board, Hamirpur.

**(c)** The selection will be made in accordance with eligibility conditions prescribed in these R & P Rules.

**(II) CONTRACTUAL EMOLUMENTS.**—The Chief Pharmacist appointed on contract basis will be paid consolidated fixed contractual amount @ ₹, 14,100/- PM. (which shall be equal to minimum of the pay band + grade pay). An amount of ₹, 430/- (3% of the minimum of the pay band+grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

**(III) APPOINTING/DISCIPLINARY AUTHORITY.**—The Director, ABV Institute of Mountaineering & Allied Sports, Manali H.P. will be appointing and disciplinary authority.

**(IV) SELECTION PROCESSES.**—Selection for appointment to the post in the case of contract appointment will be made on the basis of *vivavoce* test or if consider necessary or expedient by a written test or practical test the standard /syllabus etc. of which will be determined by the concerned recruiting agency *i.e.* H.P. Subordinate Service Selection Board, Hamirpur.

**(V) COMMITTEE FOR SELECTION OF CONTRATUAL APPOINTMENTS.**—As may be constituted by the concerned recruiting agency *i.e.* the H.P. Subordinate Service Selection Board Hamirpur from time to time.

**(VI) AGREEMENT.**—After selection of a candidate, he/she shall Sign an agreement as per **Annexure-B** appended to these Rules.

**(VII) TERMS AND CONDITIONS.**—**(a)** The contract appointee will be paid fixed contractual amount @ Rs, 14,100/- PM. (which shall be equal to minimum of the pay band+grade pay). The Contract Appointee will be entitled for increase in contractual amount @ Rs, 430/- (3% of the minimum of the pay band+ grade pay) for further extended years and no other allied benefits such as senior/selection scales etc, shall be given.

**(b)** The service of the contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance / conduct of the contract appointee is not found satisfactory.

**(c)** Contractual Appointee will be entitled for oneday casual leave after putting one month service. This leave can be accumulated up to one year. No leave of any other kind is admissible to the contract appointee. He/She shall not be entitled for Medical Reimbursement and LTC etc. only maternity leave will be given as per Rules.

**(d)** Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Appointee shall not be entitled or contractual amount for the period of absence from duty.

(e) An official appointed on Contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner Women Candidate pregnant beyond 12 weeks will stand temporarily. unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counter part officials at the minimum of the pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules and Conduct Rules etc., as, are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this column.

**16. Reservation.**—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes Other categories of persons issued by the Himachal Government from time to time.

**17. Departmental Examination .**—Not applicable.

**18. Powers to Relax.**—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with H.P. Public Service Commission relax any of the provision(s) of these Rules with respect to any Class or category of person(s) or posts(s).

ANNEXURE- B

**FORM OF CONTRACT / AGREEMENT TO BE EXECUTED BETWEEN CHIEF PHARMACIST AND THE GOVT. OF HP THROUGH THE DIRECTOR OF ATAL BIHARI VAJPAYEE OF INSTITUTE OF MOUNTAINEERING AND ALLIED SPORTS, MANALI (H.P).**

This agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_ Between Miss/Smt.Sh. \_\_\_\_\_  
S/o/D/O \_\_\_\_\_ R/O \_\_\_\_\_)

Contract appointee (here in after called the first party), and the Governor of Himachal Pradesh through the Director, Atal Bihari Vajpayee Institute of Mountaineering & Allied Sports Manali H.P. (hereinafter the second party).

Whereas, the second party has engaged the aforesaid first party and the first party has agreed to serve as a Chief Pharmacist on contract basis on the following terms and conditions:-

1. That the first party shall remain in the service of the second Party as a Chief Pharmacist for a period of one year commencing on the day of \_\_\_\_\_ and ending on the day of \_\_\_\_\_. It is specifically mentioned and agreed upon by both the parties that the contract of the first party with second party shall ipso facto stand terminated on the last working days i.e. on \_\_\_\_\_. And information notice shall not be necessary.

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his/her period of contract is to be renewed/extended.

2. The contractual amount of the FIRST PARTY will be Rs. 14,100/- per month.
3. The service of first party will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/ posted against the vacancy for which the first party was engaged on contract.
4. Contractual Chief Pharmacist will be entitled for one-day casual leave after putting in one month service. This leave can be accumulated up to one year. No leave of any kind is admissible to the contractual Chief Pharmacist. He will not be entitled for Medical reimbursement and LTC etc. Only maternity leave will be given as per Rules.
5. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A Contractual Chief Pharmacist will not be entitled for contractual amount for the period of absence from duty.
6. An official appointed on contract-basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.
7. Selected candidate will have to submit a certificate of his/her fitness from a Govt./ Registered Medical Practitioner. In case of women candidates pregnancy beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be reexamined for fitness from an authorized Medical Officer/ Practitioner.
8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter part official at the minimum of pay scale.
9. The employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s). As desired of the Hon'ble Chief Minister of the matter kindly of the matter is also of

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Name & Full Address)

(Signature of the First Party).

2. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Name & Full Address)

(Signature of the Second Party).

**LABOUR AND EMPLOYMENT DEPARTMENT****NOTIFICATION***Shimla-2, the 25-5-2012*

**No. Sharm (A) 7-1/2005 (Award)-11.**—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court Dharamshala of the following cases on the website of Labour & Employment Department:-

Sr. No:	Case No:	Title of the Case	Date of Award
1.	2/10	Smt.Shri Hans Raj Vs E.O.Municipal Committee.	29-2-2012
2.	230/10	Mast Ram Vs EE-HPPWD-S/Nagar	5-3-2012
3.	231/10	Nand Lal Vs -do-	5-3-2012
4	232/10	Ramesh Kumar V -do-	5-3-2012
5	234/10	Jeet Ram Vs -do-	5-3-2012
6	236/10	Ram Chand Vs -do-	5-3-2012
7.	239/10	Ramesh Kumar Vs -do-	5-3-2012
8	240/10	Ram Chand Vs -do-	5-3-2012
9	242/10	Pawan Kumar Vs -do-	5-3-2012
10	243/10	Shadi Lal Vs -do-	5-3-2012
11	244/10	Rattan Lal Vs -do-	5-3-2012
12	260/10	Sanjeev Kumar Vs -do-	5-3-2012
13	225/10	Ratti Ram Vs EE-HPPWD Skgt.	6-3-2012
14	19/10	Rakesh Kumar Vs EE-Flood Protection	12-3-2012
15	436/09	Ram Swaroop Vs EE-I&PH-Hamipur	12-3-2012
16	31/10	Param Dev Vs Settlement officer-D/Shala	23-3-2012
17	30/10	Bhawani Singh Vs -do-	23-3-2012
18	284/09	Bhaga Devi Vs -do-	9-4-2012
19	56/11	Manoj Kumar Vs -do-	9-4-2012
20	337/09	Shamsher Singh Vs EE-HPSEB-J/nagar	19-4-2012
21	346/09	Rajesh Kumar Vs -do-	19-4-2012
22	41/10	Sher Singh Vs -do-	19-4-2012
23	43/10	Inder Singh Vs EE-HPPWD-Kullu	2-4-2012
24	109/10	Vinod Kumar Vs Principal Polytechnic	21-4-2012
25	194/10	Ramesh Chand Vs Chairman,M/S Kangra Distt.Whole Sale	24-4-2012
26	667/08	Kasturi Lal Vs DFO-Dalhousie	24-4-2012
27	155/10	Rama Nand Vs EE-HPPWD-D/Pur	25-4-2012
28	154/10	Hem Singh Vs -do-	25-4-2012
29	238/10	Jiwan Lal Vs -do-	25-4-2012

By order,  
Sd/-

*Pr. Secretary (Lab.& Emp).*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT UNA)**

**Ref No. : 30/2010**

**Date of Institution : 23.04.2010**

**Date of Decision : 23.03.2012**

Shri Bhawani Singh s/o Shri Bhagat Ram, r/o Village Hawani, P.O. Martu, Tehsil &  
District Mandi, H.P. . . Petitioner.

*Versus*

1. The Settlement Officer, Kangra Division, Dharamshala, District Kangra, H.P.

2. Naib Tehsildar (Settlement), Circle Baragran, Kullu, District Kullu, H.P.

. . Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. R.K. Khidtta, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Bhawani Singh s/o Shri Bhagat Ram by the (1) Settlement Officer, Kangra Division, Dharamshala, District Kangra, H.P. (2) Naib Tehsildar (Settlement), Circle Baragran, Kullu, District Kullu, H.P. w.e.f.31.07.03 without serving him charge sheet, without holding enquiry and without complying with the provisions of The Industrial Disputes Act, 1947 on completion of 240 days continuous service is proper and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was engaged as Chain Man in the office of Naib Tehsildar Circle Baragran, Kullu on 13.2.1996 and he worked continuously in the said office upto 31.7.2003. During the period of his employment, the respondents used to give him fictional breaks which amounts to ‘unfair labour practice’. A notice dated 21.7.2003 was received by him indicating that his (petitioner’s) services shall stand terminated w.e.f. 31.7.2003. His services were dispensed with without assigning any reason and without complying with the provisions of the Industrial Disputes Act, 1947 (‘the Act’ for short). He was forced to approach the Hon’ble H.P. State Administrative Tribunal, Shimla for the redressal of his grievances. He instituted Original Application No.2093/2003 before the Hon’ble Tribunal. Due to the closure of the Hon’ble Tribunal the Original Application preferred by him was transferred to the Hon’ble High Court. He (petitioner) withdrew the case/Original Application from the Hon’ble High Court with liberty to avail alternate remedy. After the withdrawal of the case, he approached the respondents/department a number of times to re-engage him but in vain. Then he served a demand notice upon the respondents. The copy of the demand notice was also forwarded to the Labour-cum-Conciliation Officer, Kullu. The latter called the respondents. The matter could not be reconciled because of the adamant attitude of the respondents. No retrenchment compensation was paid to him. His (petitioner’s) work and conduct always remained upto the satisfaction of the

officials of the respondents. He had completed 240 days of service in each calendar year preceding the date of his termination. The services of the other workmen engaged by the respondents/department have already been regularized. He has a right to continue in service till he attains the age of superannuation. The work which (petitioner) was performing is still available with the department. The workers are required by the respondents/department. The act and conduct of the respondents is highly illegal, unjust and arbitrary. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, he (petitioner) prays that the respondents be directed to reinstate him with full back wages and other consequential benefits including the continuity and seniority in service. He also prays that his services be regularized as per the policy of the State Government by setting aside the termination.

3. On notice, the respondents appeared. They filed common reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable against them. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner. They (respondents) by undertaking the settlement operation were performing the sovereign function of the State. Therefore, they do not fall under the definition of the industry. This Court/Tribunal has no jurisdiction to entertain and try the petition. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court.

On merits, it stands admitted that the petitioner was employed as Chain Man in the office of Naib Tehsildar, Circle Baragan, Kullu on 13.02.1996. The man days chart of the petitioner is appended as annexure RI to the reply. The copy of the Office Order with respect to the appointment of the petitioner is attached as annexure R-II to the reply. The State Government by taking recourse too the provisions of the H.P. Land Revenue Act, 1954 carries out sovereign function of surveys/settlement of land holding by undertaking the Settlement Operations under the overall supervision of the Settlement Officer (respondent No.1) Per notification dated 9th February, 1995 issued by the State Government the area falling within the territorial jurisdiction of District Kullu came under the Settlement Operation. Copy of such notification is annexed as annexure R-III to the reply. For carrying out the Settlement Operation, the respondent No.1 employed Chain Men as per law in a phased manner. On 03.04.2003 as many as 64 daily paid Chain Men were employed. Their composite seniority list is attached as annexure R-V to the reply. With the conclusion of the work of settlement, the need of work force also diminished. Due to the nonavailability of the work, funds and sanction, it was difficult for them (respondents) and the State to carry on with the services of all the Chain Men. Accordingly, the State of H.P. vide letter dated 26.8.2002 accorded the sanction/approval for the posts of 116 casual Patwaris and 50 daily waged Chain Men. In view of the sanction, the respondent No.1 by applying the principle of 'last come first go' terminated the services of the Chain Men figuring at serial No. 51 to 64 of the seniority list (annexure RV). A notice dated 21.7.2003 (annexure RVI) was duly given to the petitioner informing him that his services shall stand dispensed with w.e.f. 31.7.2003. The petitioner and the similarly situated persons are not entitled to any protection under the Act or continuity in service. The Settlement Operation is not of permanent nature. It has been owned that the petitioner had instituted the Original Application before the Hon'ble Tribunal. The said Original Application was withdrawn by the petitioner from the Hon'ble High Court of his own accord and free will. The instant industrial dispute has been raised by the petitioner at a belated stage per demand notice dated 01.3.2009. The petitioner has been retrenched from service being surplus. No provision of the Act has been flouted. The disengagement of the petitioner is legal and valid. He is not entitled to any relief. The petitioner is gainfully employed as an agriculturist after his termination.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondents. It has been stated that the work under the respondents is of permanent nature. For the said reason the services of the persons senior to him have already been regularized. There is/was no surplus-age as alleged. The work is still available with the respondents/department.

5. Vide order dated 05.7.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 31.7.2003 is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as the respondent is allegedly performing sovereign function, if so, to what effect? . . . OPR.
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : No

Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### **Issue No. 1:**

8. The petitioner Sh. Bhawani Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that he used to do manual work. The information given by the respondents with respect to the availability of work pertaining to the settlement is Ex. PW1/B.

In the cross-examination, he denied that at the time of his engagement, he and the other Chain Men were informed by the respondents that the work is of temporary nature and on its completion their services will be terminated. The persons junior to him (PW1) namely S/Sh. Durga Dass and Mohinder are still serving the department. He denied that his services were validly terminated after giving the notice. He denied that he raised the industrial dispute at a belated stage. He is making both the ends meet by doing the work of agriculture.

9. Conversely, Sh. Vikas Labroo, Settlement Officer, Kangra Division at Dharamshala (respondent No.1) appeared as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He also placed on the record various documents viz Exhibits RW1/B to H.

In the cross-examination he admitted that the petitioner served the department regularly w.e.f. 1982 to 01.12.2001. He also admitted that as per the record the petitioner completed 240 days of service prior to 01.12.2001. No notice except Ex. RW1/F was given to the petitioner before disengaging his services. No retrenchment compensation was paid to the petitioner. He (RW1) admitted that in different areas, the Settlement Operation is still in progress. He admitted that the

settlement is going on in the villages detailed in the list/information Ex. X1. Further, he admitted that the services of some of the persons junior to the petitioner have already been regularized by the department. Self stated, the juniors have been re-engaged as per the directions of the Hon'ble High Court of H.P. He admitted that the petitioner had raised the industrial dispute before the Hon'ble Administrative Tribunal for the first time after the year 2001. He refuted that the petitioner was retrenched wrongly and illegally.

10. Ex. RW1/B is the man days chart relating to the petitioner.

11. Ex. RW1/C is the copy of the Office Order vide which the services of the petitioner were engaged as daily waged Chain Man.

12. Ex. RW1/D is the copy of the Notification dated 09th February, 1995 issued by the Department of Revenue, Government of H.P. It depicts that the Settlement Operation was ordered to be conducted in District Kullu.

13. Ex. RW1/E is the list showing the particulars of daily waged Chain Men as on 31.3.2003 of the Settlement Office, Kangra Division Dharamshala. The name of the petitioner finds mention in this list at serial No. 52.

14. Ex. RW1/F is the copy of the Notice dated 21st July, 2003 which was served upon the petitioner by the respondent No.1 indicating that his services will stand terminated w.e.f. 31.7.2003 (afternoon).

15. Ex. RW1/G is the copy of the demand notice dated 01.3.2009 served by the petitioner upon the respondents under Section 2-A of the Act.

16. Ex. RW1/H is the copy of the Order passed by the Hon'ble High Court of H.P. in Civil Writ Petition (T) No.2941/2008.

17. Ex. X1 is the information supplied by the respondent No.1 with respect to the continuity of Settlement Operation in different areas. It corresponds to Ex. PW1/B.

18. It is the admitted case the respondents that the services of the petitioner were engaged as daily waged Chain Man w.e.f. 13.2.1996 and he worked as such upto 31.7.2003 (afternoon). It is not the case of the respondents that the petitioner abandoned the job of his own. Rather, their version is that the services of the petitioner were terminated w.e.f. 31.7.2003 (afternoon) after serving the notice dated 21.7.2003 upon him. Copy of the said notice is Ex. RW1/F.

19. From the statement made by Sh. Vikas Labroo (RW1) coupled with the documents Exhibits PW1/B and X1 placed on the file, it becomes clear that the Settlement Operation is still going on in different villages of Districts Hamirpur, Kullu and Una. Therefore, it cannot be said that the respondent had no work to continue with the services of the petitioner as he had become surplus due to the completion of the Settlement Operation.

20. The testimony made by RW1 and the man days chart Ex. RW1/B go to show that the petitioner had completed 240 days of continuous service in a block of 12 calendar months preceding the date of his retrenchment i.e. 31.7.2003. It is not the version of the respondents that the petitioner/workman was given one month's notice in writing indicating the reasons for retrenchment. Rather, notice dated 21.7.2003, the copy of which is Ex. RW1/F, was given to the petitioner by the respondent No.1 indicating that his services shall stand terminated w.e.f. 31.7.2003 (afternoon) i.e. just after 10 days from the date of the issuance of the notice. Admittedly,

no retrenchment compensation was paid to the petitioner. Therefore, it can be safely said that the respondents have failed to comply with the mandate of Section 25-F of the Act.

21. It has come in the statement of Sh. Vikas Labroo (RW1) that the persons junior to the petitioner have been regularized by the department. It is also there in the deposition of RW1 that the Settlement Operation is continuing in different areas. There is not even an iota of evidence on the record to show that an opportunity of re-employment was given to the petitioner after his retrenchment. The principle of 'last come first go' has not been adhered to by the respondents. Their action is, thus, also in derogation of Sections 25-G and 25-H of the Act.

22. So far as Section 25-N of the Act is concerned, I feel that the provisions of the said Section are not attracted in the present case.

23. This issue has been answered accordingly.

**Issue No. 2:**

24. Taking into consideration the observations made by our Hon'ble High Court in Civil Writ Petition (T) No.9554/2008 titled as Mohinder Singh vs. State of H.P. & anr. decided on 26.4.2010 as well as Civil Writ Petition (T) No.9552/2008 titled as Durga Dass vs. State of H.P. and another decided on 29.4.2010, it can be easily said that the provisions of the Act are applicable to the instant case. The petition is maintainable in the present form.

25. This issue is decided in favour of the petitioner and against the respondents.

**Relief (Issue No. 3):**

26. As a sequel to my findings on the aforesaid issues, the reference in hand is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to continuity and seniority in service except back wages. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 43/2010**

**Date of Institution : 23.4.2010**

**Date of Decision : 20.4.2012**

Shri Inder Singh s/o Shri Jagat Ram, r/o Village Bharmour, P.O. Drubbal, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division No.-II, Kullu, Distt. Kullu, H.P. . . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference (in accordance with the corrigendum) has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Inder Singh s/o Shri Jagat Ram by The Executive Engineer, HPPWD Division No.-II, Kullu, Distt. Kullu, H.P. w.e.f. 31.10.1999 without following the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what relief of service benefits including seniority and compensation the above workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was appointed as a Cook by the respondent on daily wage basis in Circuit House, Manali on muster roll in the month of July, 1998. He worked continuously as such upto 31.10.1999 without any break. At the time of the engagement of his services, no appointment order was issued by the respondent. He (petitioner) has already received the payment against vouchers for the entire period of his service. On 01.11.1999 his services were unlawfully terminated by the respondent. No notice was given to him. Neither he was charge-sheeted nor any inquiry was conducted for his alleged misconduct. One month pay in lieu of the notice period and the retrenchment compensation were not paid to him. He has been removed from service by the respondent in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('the Act' for short). He (petitioner) had completed more than 240 days of service in the last 12 calendar months preceding the date of his illegal termination i.e. 01.11.1999. While he (petitioner) was serving the respondent, S/Sh. Jai Ram and Deep Ram were working as helpers in the Circuit House whereas S/Sh. Shesh Ram and Pune Ram were working with him as cooks in the Circuit House. After the termination of his services, he (petitioner) approached the Assistant Engineer, HPPWD Sub Division, Manali to re-engage his services, but in vain. He (petitioner) has come to know from the reliable resources that the respondent/department has retained the persons junior to him at the circle level. Even new daily waged cook has been appointed by the respondent at the circle level. He was not given an opportunity of re-employment. The respondent has failed to adhere to the provisions of Section 25-G and 25-H of the Act. From the date of his illegal termination, he (petitioner) is unemployed. The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- (i) The Hon'ble Court kindly be set aside the illegal termination of applicant dated 01.11.1999 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential benefits throughout in the interest of justice and justice be done'.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been taken to the effect that the petition is not maintainable in the present form. The petition is time barred as the matter pertains to the year 1999. The petitioner has not come to the Court with clean hands. He has concealed the true facts from the Court. Actually, the petitioner willfully absented from duty after 01.11.1999.

On merits, it has been owned that the services of the petitioner were engaged on daily wage basis as cook in Circuit House, Manali in the month of July, 1998. He worked for 137 days in the year 1998 and 215 days in the year 1999 i.e. upto 31.10.1999. After 01.11.1999 the petitioner remained absent without any information. It is wrong to say that the petitioner worked continuously from July, 1998 to 31.10.1999. The monthwise detail of working days of the petitioner is appended to the reply. The petitioner was never removed from service as alleged. In fact, he left the job of his own on 01.11.1999 without any intimation to the department. The petitioner has knocked the doors of the Court with a malafide intention by suppressing the true facts. He never completed 240 days of service as alleged. S/Sh. Jai Ram and Deep Ram have been regularized from the post of daily waged beldars to the post of regular beldars after completing 8 years of continuous service with 240 days in each calendar year. Sh. Deep Ram was engaged on 01.5.1992 and regularized on 10.10.2006. Sh. Jai Ram was appointed on 01.03.1997 and regularized on 25.8.2007. Since the petitioner left the job of his own, he is not entitled to the regularization as claimed. The petitioner never approached him (respondent) and the Assistant Engineer, HPPWD Sub Division, Manali for re-engagement. No person junior to the petitioner has been retained in service. The petitioner is gainfully employed.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondent. It has been pleaded that during the period of his employment the respondent used to give him fictional breaks. He never abandoned the job as alleged. New/fresh hands have been engaged by the respondent after his (petitioner's) disengagement.

5. Per order dated 05.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.11.1999 is violative of the provisions of Section 25-F and 25-G of the I.D. Act as alleged. If so, what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable as alleged. If so, to what effect . . . OPR.
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect. . . OPR.
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1:

8. The petitioner Shri Inder Singh stepped into the dock as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/A i.e. the copy of the demand notice dated 1st June, 2007 served upon the respondent by him. He continued to state that presently he is unemployed. He makes both the ends meet by doing the work of agriculture.

In the cross-examination, he admitted that he worked as cook in Circuit House, Manali from July, 1998 to October, 1999 only. He denied that he did not complete 240 days of service and used to remain absent from duty for months together. He controverted that after 1st November, 1999, he left the job of his own to work as a cook privately and earn more. He admitted that S/ Sh. Jai Ram and Deep Ram belong to the other category of workers i.e. beldars/helpers. He denied that he never approached the respondent for re-employment and is not entitled to any relief.

9. Conversely Sh. Ashok Kumar Chauhan, Executive Engineer, HPPWD, Division No.2, Kullu testified as RW1. He corroborated on oath the contents of the reply filed by him. He also placed on the record Ex. RW1/A i.e. mandays chart relating to the petitioner. Further, he stated that S/ Sh. Jai Ram and Deep Ram are senior to the petitioner. The petitioner is gainfully employed and left the job voluntarily.

In the cross-examination, he admitted that the petitioner had completed more than 240 days of service in 12 calendar months anterior to 01.11.1999. No notice was served upon the petitioner regarding his willful absence from duty. He admitted that the demand notice Ex. PW1/A was received from the petitioner. He denied that after the year 2000 several workmen have been employed by the department.

10. RW2 is Shri Sanjeev Sharma, JE, HPPWD, Sub Division Manali. He stated that he has been authorized vide letter Ex. RW2/A by the Executive Engineer to depose. He has brought the original record. Exhibits RW2/B and C are the copies of the muster rolls which were issued from 01.10.1999 to 31.10.1999 and 01.11.1999 to 30.11.1999. The muster rolls pertain to strength of Circuit House, Manali.

In the cross-examination, he admitted that the name of the petitioner does not find mention in Ex. RW2/C. Self stated, the muster roll is issued on the basis of the strength of the employees. As and when any workman comes present, his name is incorporated in the muster roll.

11. It is the admitted case of the respondent that the services of the petitioner were engaged on daily wage basis as cook in Circuit House, Manali in the month of July, 1998 and he worked as such upto 31.10.1999. The version of the respondent is that the services of the petitioner were not terminated verbally as alleged. Actually, he (petitioner) left the job of his own accord and

free volition. It is common knowledge that the abandonment has to be proved by the respondent/employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Therefore, the plea of abandonment set up by the respondent is not established.

12. From the admissions made by the respondent (RW1) coupled with the mandays chart Ex. RW1/A placed on the record, it can be gathered that the petitioner had completed more than 240 days of continuous service in a period of 12 calendar months as envisaged under Section 25-B of the Act preceding the date of his retrenchment i.e. 31.10.1999.

13. Section 25-F of the Act reads thus:

“25-F. **Conditions precedent to retrenchment of workmen.**- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. There is nothing on the file to show that the mandate of Section 25-F was complied with by the respondent before disengaging the services of the petitioner. Rather, it is an admitted fact that neither any notice was given to him nor the retrenchment compensation was paid.

15. Coming to the retention in service of the other workmen namely S/Sh. Jai Ram and Deep Ram by the respondent as well as the regularization of their services, I will like to say that both of them are/were senior to the petitioner. There is no cogent and convincing evidence on the record to establish that any person junior to the petitioner has been retained in service by the respondent and new/fresh hands have been engaged by the respondent after the termination of the services of the petitioner.

16. This issue has been answered accordingly.

## **Issue No.2:**

17. Not pressed.

## **Issue No. 3 :**

18. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of*

*delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

20. This issue is decided in favour of the petitioner and against the respondent.

**Relief (Issue No. 4):**

21. As a sequel to my findings on the aforesaid issues, the reference in hand succeeds and the same is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 31.10.1999 except back wages. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of April, 2012.

RAJAN GUPTA,  
Sd/-  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 230/2010**

**Date of Institution : 07.08.2010**

**Date of Decision : 05.03.2012**

Shri Mast Ram s/o Shri Sukh Ram, r/o Village Khanyod, P.O. Khurahal, Tehsil Sundernagar, Distt. Mandi, H.P. . . Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P. . . Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Mast Ram s/o Shri Sukh Ram, by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during June to August, 1997 and finally w.e.f. December, 1997 in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1997 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of December, 1997. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent).

On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.595 in the month of March, 1997. He worked only for four months i.e. the months of March, April, October and November in the year 1997. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of November, 1997. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority

list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in December, 1997 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

## REASONS FOR FINDINGS

### Issue No. 1:

8. The petitioner Shri Mast Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C.

In the cross-examination, he admitted that he worked only for four months in the year 1997 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C.

In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. December, 1997. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent. 12. This issue has been answered accordingly.

#### **Issue No. 2:**

13. Not pressed.

#### **Issue No. 3:**

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

**Relief (Issue No. 4):**

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 242/2010**

**Date of Institution : 31.08.2010**

**Date of Decision : 05.03.2012**

Shri Pawan Kumar s/o Shri Gurdawaru Ram, r/o Village Khanyod, P.O. Khurahah, Tehsil Sunder Nagar, Distt. Mandi, H.P. *.. Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P. *.. Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Pawan Kumar s/o Sh. Gurdawaru Ram by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. w.e.f. December, 1997, in violation of provisions of Section 25-F of the ibid Act and not giving

him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1996 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of December, 1997. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to 'unfair labour practice'. The act and conduct of the respondent affected his (petitioner's) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of 'last come first go' has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent).

On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.280 in the month of October, 1997. He worked only for two months i.e. the months of October and November in the year 1997. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of November, 1997. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2009. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The

work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in December, 1997 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief : Reference allowed in part vide operative part of the Award.

## REASONS FOR FINDINGS

### Issue No. 1:

8. The petitioner Shri Pawan Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C.

In the cross-examination, he admitted that he worked only for two months in the year 1997 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C.

In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. December, 1997. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.  
12. This issue has been answered accordingly.

#### **Issue No. 2:**

13. Not pressed.

#### **Issue No. 3:**

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

#### **Relief (Issue No.4):**

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 236/2010**

**Date of Institution : 07.08.2010**

**Date of Decision : 05.03.2012**

Shri Ram Chand alias Sh. Ramanand s/o Sh. Beli Ram, r/o Village Khanyod, P.O. Khurahal, Tehsil Sunder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P. . . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ram Chand alias Sh. Ramanand s/o Sh. Beli Ram, by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during December, 1996 to April, 1999 and finally w.e.f. June, 1999 in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1996 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of June, 1999. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to 'unfair labour practice'. The act and conduct of the respondent affected his (petitioner's) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of 'last come first go' has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent).

On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.280 in the month of September, 1996. He worked only for three months i.e. the months of September, October and November in the year 1996. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of May, 1998. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in June, 1999 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

### **REASONS FOR FINDINGS**

#### **Issue No. 1:**

8. The petitioner Shri Ram Chand stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C.

In the cross-examination, he admitted that he worked only for three months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C.

In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. June, 1999. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

**Issue No. 2:**

13. Not pressed.

**Issue No. 3:**

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

**Relief (Issue No.4):**

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 155/2010**

**Date of Institution : 20.5.2010**

**Date of Decision : 25.04.2012**

Shri Rama Nand s/o Shri Chitru Ram, r/o Village Thati, P.O. Kot, Sub Tehsil Dharampur,  
Distt. Mandi, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.  
. . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Rama Nand s/o Shri Chitru Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 09.02.04 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer.”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar on daily wages by the respondent on the muster roll in the month of July, 1998. He worked continuously as such upto 8.2.2004. During the above said period, he had completed 240 days of work in each calendar year and the last 12 calendar months preceding the date of his termination. On 09.02.2004 his services were terminated by the respondent along with 1697 daily waged workmen. At the time of dispensing with his services, he (petitioner) was paid the retrenchment compensation. While disengaging his services, the principle of ‘last come first go’ has not been followed by the respondent. The persons junior to him namely S/Sh. Subhash Chand, Shashi Kant, Bidhi Chand, Dharampal and Inder Singh etc. have been retained in service by the respondent. After the termination of his (petitioner’s) services and the other workmen numbering 1697, in the months of June and July, 2004, some of the workmen have been re-engaged by the respondent. He was not given an opportunity of re-employment. In the month of December, 2004, he approached the respondent as well as the Assistant Engineer, Sub Division, Dharampur to provide him the work on the basis of his seniority. The respondent and the Assistant Engineer conveyed to him (petitioner) verbally that they are not in a position to provide him the job being surplus. The respondent and the Assistant Engineer further told him (petitioner) that the retrenchment process of the other workmen who are surplus, is still continuing because of which his services cannot be re-engaged. S/Sh. Balak Ram, Rakesh Kumar, Desh Raj, Abdul Razzak and Mansa Ram etc., who were retrenched on 09.02.2004 alongwith him (petitioner) have been reemployed by the respondent in the months of June and July, 2004 despite the fact that they

are/were junior to him. Not only this, on 08.7.2005 again the respondent retrenched 1087 daily waged workmen. Those workers raised the dispute under the Industrial Disputes Act, 1947 ('the Act' for short) in the years 2007 and 2008. Approximately 500 workmen have been reinstated by the respondent and paid 50 % back wages with all consequential service benefits including the seniority as per the order passed by this Court. The retrenchment order dated 08.7.2005 has been quashed by this Court/Tribunal. The persons who have been reinstated in service and paid 50% back wages are S/Sh. Vijay Kumar, Megh Singh and Sanjay Kumar etc. All of them are/were junior to him (petitioner). The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also in contravention of the provisions contained under Sections 25-G and 25-H of the Act. He (petitioner) is unemployed from the date of his illegal termination.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 09.02.2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court and is estopped from filing the petition by his act and conduct. The present petition/statement of claim is not maintainable as another efficacious remedy at the first instance is/was available to the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on the muster roll in the month of July, 1998 and he worked continuously upto 08.02.2004. It has been admitted that the petitioner had completed 240 days of work in all the years and the last 12 calendar months preceding the date of his termination. Further, it stands admitted that the services of the petitioner and 1697 other Workmen were terminated on 09.02.2004 and they were paid the retrenchment compensation. The petitioner and the other workmen were retrenched after adopting all the codal formalities. Thereafter, as per the orders of the Government, the workmen were reinstated. The petitioner did not join his duties. No person junior to the petitioner has been retained in service or re-engaged. It has been admitted that 1087 workmen were retrenched on 07.07.2005. Those workmen challenged the retrenchment orders and have been retained in service as per the orders of the Court. Since the petitioner failed to join his duties as per the orders of the Government, the question of retaining the persons junior to him in service or violating the provisions of the Act does not arise. The petitioner never approached him (respondent) for reinstatement. The fact that the petitioner is not gainfully employed from the date of his retrenchment has been denied for want of knowledge. The petition is devoid of any merit. In these circumstances the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 29.8.2011, below given issues were struck by my ld. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?  
.. OPP.
2. Whether the termination of the petitioner is also violative of the provisions under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?  
.. OPP.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?  
.. OPR.
4. Whether the reference is not maintainable as alleged. If so, to what effect?  
.. OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed.

Relief. : Reference/petition allowed vide operative part of the Award.

### **REASONS FOR FINDINGS**

#### **Issues No.1 and 2:**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Sh. Rama Nand stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the seniority list/year-wise mandays chart Ex. PW1/B in respect of the workman namely Sh. Shashi Kant s/o Shri Bihari Lal who was junior to him and retained in service by the respondent at the time of the termination of his (petitioner's) services. Further, he proved Ex. PW1/C i.e. the seniority list of daily waged beldar in respect of the respondent who had completed 8 years of service upto 31.3.2008.

In the cross-examination, he admitted that he had joined as daily waged beldar in 1998 and worked as such upto February, 2004. He also admitted that the respondent/department had terminated his services by giving him a notice and paying three months salary as retrenchment compensation. He admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of the new Division, the labour became surplus. He even denied that no person junior to him was retained in service by the respondent at the time of his retrenchment. He denied that he did not rejoin the service willingly at the relevant time. He controverted that he is gainfully employed as an agriculturist. He denied that the instant industrial dispute was raised by him at a belated stage and he is not entitled to any relief.

10. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also placed on the record Ex. RW1/A i.e. the mandays chart relating to the petitioner. He continued to state that the services of the petitioner were terminated being surplus and due to shortage of the funds. Before terminating the services of the petitioner the then Executive Engineer, HPPWD, Dharampur had sought the permission from the specified authority namely the then Chief Engineer, HPPWD, Central Zone, Mandi. The specified authority after affording an opportunity of being heard to the petitioner granted the permission to terminate his services. After that, the services of the petitioner were disengaged by giving him a notice Ex. RW1/B and paying the retrenchment compensation as per Section 25-F of the Act. Thereafter as per memorandum of settlement dated 29.3.2004 (Ex. RW1/C) executed between him (respondent) and the representatives of the workers, it was agreed that all the retrenched workmen numbering 1858 of different categories including the petitioner will be re-engaged upto 16.4.2004. The retrenched workers were also supposed to give their joining upto 30.4.2004. The petitioner failed to resume his duties as per the memorandum of settlement Ex. RW1/C. For this reason, he could not be re-engaged. The present dispute has been raked up by the petitioner at a belated stage in the year 2008. He is working as an agriculturist and earns his livelihood by doing the work of agriculture. As the petitioner failed to join the service as per the terms and conditions of the memorandum of settlement, he is not entitled to any benefit.

In the cross-examination, he admitted that the petitioner worked for more than 240 days during the period of 12 calendar months preceding the date of his termination. He denied that the persons junior to the petitioner were retained in service at the time of the termination of the services of the petitioner. He admitted that the seniority list Ex. PW1/B was issued by the office. He also admitted that one Smt. Mamta Devi w/o Sh. Hans Raj was engaged as daily waged beldar and her services were terminated w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-employed on compassionate grounds as her husband Sh. Hans Raj died while serving the HPPWD. He refuted that Smt. Mamta Devi was junior to the petitioner. Before re-engaging Smt. Mamta Devi no opportunity of re-employment was given to the petitioner. He cannot say that Sh. Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that the memorandum of settlement was neither to the knowledge of the petitioner nor he (petitioner) had authorized any person to sign it on his behalf. He admitted that no notice to rejoin as on 30.4.2004, and thereafter, was issued to the petitioner. Further, he admitted that no inquiry was conducted against the petitioner and a notice of one month was not given to him.

11. It is the admitted case of the respondent that the services of the petitioner were engaged as daily waged beldar w.e.f. July, 1998 and he worked as such continuously upto 08.02.2004. It is also the admitted case of the respondent that the petitioner had completed 240 days of work in each calendar year of his service as well as the block of last 12 calendar months preceding the date of his termination i.e. 09.02.2004. The respondent in his reply nowhere pleaded that the services of the petitioner and other workmen were dispensed with after seeking permission from the specified authority viz Chief Engineer, HPPWD, Central Zone, Mandi. Therefore, the evidence of the respondent to that effect being beyond his pleadings cannot be read. Otherwise too, it is an admitted fact that the retrenchment orders passed by the respondent by taking recourse to the provisions of Section 25-N of the Act have already been set aside by this Court and affirmed by the Hon'ble High Court of Himachal Pradesh.

12. It is an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 09.02.2004. The contention of the respondent is that before the termination of the services of the petitioner a notice (the copy of which is Ex. RW1/B) was given to him. The petitioner was also paid the retrenchment compensation. Perusal of Ex. RW1/B goes to show that per this notice dated 23.01.2004, the services of the petitioner were terminated w.e.f. 09.02.2004.

13. Section 25-F of the Act reads thus:

“25-F. **Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. Bare perusal of the notice (Ex. RW1/B) goes to show that it does not comply with the requirements of Section 25-F of the Act. Moreover, the respondent (RW1) in his cross-examination admitted that neither one month's notice was served upon the petitioner nor any inquiry was conducted against him before the termination of his services.

15. From the oral and documentary evidence placed on the record, it becomes clear that the petitioner had completed 240 days of continuous service in a period of 12 calendar months preceding the date of his retrenchment. Not only this, the persons junior to the petitioner have been retained in service by the respondent. There is nothing on the file to show that before engaging the new/fresh hands, an opportunity of re-employment was given to the petitioner. The principle of 'last come first go' has not been followed by the respondent. His act is violative of Sections 25-G and 25-H of the Act.

16. Coming to the assertion of the respondent that the petitioner failed to join his duties as per the memorandum of settlement dated 29.3.2004, the copy of which is Ex. RW1/C, I will like to say that there is nothing on the file to show that the petitioner was a party to the memorandum of settlement or had authorized someone to sign the same on his behalf. There is not even an iota of evidence on the record to show that the memorandum of settlement was to the knowledge of the petitioner. It is the admitted case of the respondent that no notice was sent to the petitioner on 30.4.2004 and thereafter calling upon him to resume his duties as per the memorandum of settlement allegedly arrived at between the parties.

17. It is an admitted fact that thousands of workmen were retrenched by the respondent w.e.f. 09.02.2004 to 08.07.2005. The retrenchment orders relating to a number of workmen have already been set aside by this Court. Pursuant to the Awards passed by this Court as affirmed by the Hon'ble High Court of Himachal Pradesh, a number of workmen have been re-employed and paid a lump sum amount of Rs.50,000/- in lieu of back wages, litigation expenses and compensation. To avoid discrimination amongst the workmen, I feel that the petitioner is also entitled to a sum of Rs.50,000/- on account of back wages and compensation etc. His retrenchment is bad in the eyes of law.

18. These issues are decided in favour of the petitioner and against the respondent.

**Issue No. 3:**

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. For entitlement to back wages on reinstatement of an employee, the initial burden lies upon him to show that he was not gainfully employed. Only thereafter, the employer is required to rebut the same. The bald statement made by the petitioner (PW1) to the effect that from the date of his termination upto now he is unemployed cannot be taken as a gospel truth. The petitioner must be doing some work of agriculture etc. to make both the ends meet.

21A. This issue is decided in favour of the petitioner and against the respondent.

**Issue No. 4:**

22. Not pressed.

**Relief (Issue No. 5):**

23. As a sequel to my findings on the above issues, the instant reference/claim petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity in service and seniority from the date of his illegal termination. The petitioner is also held entitled to a lump sum amount of Rs.50,000/- in lieu of back wages and compensation etc. The respondent is directed to regularize the services of the petitioner as per the policies framed by the State Government from time to time. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of April, 2012.

By order,  
RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 232/2010**

**Date of Institution : 07.08.2010**

**Date of Decision : 05.03.2012**

Shri Ramesh Kumar s/o Shri Jai Ram, r/o Village Khurahal, Tehsil Sunder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P. . . *Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ramesh Kumar s/o Sh. Jai Ram, by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during September, 1996 to May, 1997 and finally w.e.f. September, 1997 in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1995 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of September, 1997. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent).

On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.131 in the month of June, 1996. He worked only for four months i.e. the months of June, July, August and December in the year 1996. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the months of February and June, 1997. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in September, 1997 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

.. OPP.

2. Whether the reference is not maintainable as alleged. If so, to what effect?

.. OPR.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect?

.. OPR.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No

Issue No. 2 : Not Pressed

Issue No. 3 : No

Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### Issue No. 1:

8. The petitioner Shri Ramesh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C. In the cross-examination, he admitted that he worked only for four months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C.

In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. September, 1997. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

#### ISSUE NO. 2

13. Not pressed.

**ISSUE NO. 3**

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 4)**

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 260/2010**

**Date of Institution : 25.10.2010**

**Date of Decision : 05.03.2012**

Shri Sanjeev Kumar s/o Shri Karam Singh, r/o Village Shiun, P.O. Khurahal, Tehsil Sunder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sanjeev Kumar s/o Shri Karam Singh by The executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during March, 1997 to May, 1998 and finally w.e.f. August, 1998, in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1996 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of August, 1998. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009 the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short). As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.411 in the month of December, 1996. He worked intermittently as per his own wish upto July, 1998. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of November, 1999. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given

to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for re-employment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 29.06.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner is violative of the provisions of Section 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Sanjeev Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Mark-A and the seniority list Mark-B. In the cross-examination, he admitted that he worked only for three months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex.

RW1/B and the seniority list Ex. RW1/C. In the cross-examination, he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Mark-A and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. August, 1998. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

## ISSUE NO. 2

13. Not pressed.

## ISSUE NO. 3

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

## RELIEF (ISSUE NO. 4)

17. Taking into consideration my findings on the aforesaid issues the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 41/2010**

**Date of Institution : 23.4.2010**

**Date of Decision : 19.4.2012**

Shri Sher Singh s/o Shri Narotam Ram, r/o Village Balh, P.O. Panjalag, Tehsil Ladbhrol,  
Distt. Mandi (H.P.)

...Petitioner

Versus

The Additional Superintending Engineer, HPSEB, Electrical Division Joginder Nagar,  
Distt. Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. B.K. Sood, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sher Singh s/o Sh. Narotam Ram by The Additional Superintending Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, H.P. w.e.f. 21.10.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent on daily waged basis as beldar on the muster roll No.48 w.e.f. 25.4.1982. He worked as such with the respondent upto 20.10.2004. During the period of his employment, his services were engaged and disengaged by the respondent without any reason. His services used to be disengaged with an idea that he should not be allowed to complete 240 days in each calendar year. Suddenly, his services were terminated by the Assistant Engineer, Electrical Sub Division, Lad Bharol vide verbal order dated 21.10.2004 as per the directions issued by the respondent. Before the termination of his (petitioner's) services neither any show cause notice was given to him nor he was charge-sheeted. Even no enquiry was conducted against him. One month pay in lieu of notice period and retrenchment compensation were also not paid to him at the time of his retrenchment. He (petitioner) had completed 240 days of continuous service in each calendar year as well as the last 12 calendar months preceding the date of his illegal termination. The respondent has failed to comply with the terms and conditions of Section 25-F of the Industrial Disputes Act, 1947 ('the Act' for short). The principle of 'last come first go' has not been adhered to by the respondent. The persons junior to him (petitioner) namely S/Sh. Sanjeev Kumar, Janak Raj, Raj Kumar and Sansar Chand have been retained in service by the respondent at the time of his illegal termination. The above named workmen were working with him (petitioner) in Electrical Sub Division Lad Bharol. Not only this one Sh. Piar Chand s/o Sh. Sohan Singh was working under the respondent as daily waged beldar w.e.f. 25.2.1999. His services were also dispensed with by the

respondent. The services of Sh. Piar Chand have been re-engaged by the respondent in the year 2005. Presently, the said workman (Sh. Piar Chand) is working on regular basis under the respondent as a regular T-Mate on payment of the regular pay scale. No opportunity of re-employment was given to him (petitioner). From the date of his retrenchment, he (petitioner) is unemployed. The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim the petitioner has claimed the following relief(s) in this petition:

- “i) The Hon’ble Court may kindly be set aside the unlawful termination order dated 21.10.2004 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- ii) The Hon’ble Court may kindly be set aside the break period of the applicant engagement and disengagement w.e.f. 1982 to onwards till the date of his termination and directed to respondent to condone the entire period in his continuity of service with seniority for the purpose of regularization.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been taken to the effect that the petition is bad for want of complete particulars. The same is also bad for non-joinder of the necessary parties and mis-joinder of the parties. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner absented from duties w.e.f. 25.7.1982 to 24.12.1998 i.e. for more than 16 years. The concealment of this material fact by the petitioner disentitles him from claiming any relief. The petitioner is estopped from claiming any benefit by his act, conduct and silence. The petition is time barred.

On merits, paras 1 to 4 of the reply read thus:

- “1. The contents of this para of the petition are correct only to the extent that the applicant was engaged on 25.4.1982 as daily waged Beldar vide Muster Roll No.48. Rest of the contents are totally false. It is not out of place mentioned here that the applicant worked with the Department only upto 24.7.1982 from the date of his 1st Employment i.e. for only 91 days. Thereafter he absented himself from the job for more than 16 years i.e. 16 year & 5 months to be exact which fact is well known to him but, has been concealed from the court. After having absented himself from work for such a long period and without approaching even one for re-employment during this entire period, he sought re-employment on 25.12.1998. Although the then Assistant Engineer Incharge could have easily refused to take him into employment, yet he (A.E.) took pity on him and reengaged him on daily waged basis on 25.12.1998 thereafter the applicant worked with the Department upto 24.3.1999 with break of 4 days from 21.1.1999 to 24.1.1999 (both days inclusive). He was disengaged on 24.3.1999 by giving him due notice dated 10.3.1999 (Annexure RA-I). He was then re-engaged on 21.9.1999 and he worked upto 20.11.1999. Thereafter he absented himself from work without any information or applying for leave. He was then re-engaged on 3.1.2000 and his services were terminated with effect from 31.1.2000 by giving him due notice dated 21.1.2000 of 10 days which is (Annexure RA-II). The applicant was then reemployed on 5.6.2000 and worked upto 20.7.2000. Thereafter he absented himself from duty without information and without applying for leave till 24.6.2001. On

- 25.6.2001 he was again re-engaged and was disengaged w.e.f. 14.8.2001 by giving him 10 days notice dated 4.8.2001 which is (Annexure RA-III). On 21.10.2003 he was re-employed and he worked upto 20.3.2004 for 151 days. From 21.3.2004 he again absented himself from duty till 31.3.2004 i.e. for 11 days. He was re-engaged on his request for from 1.4.2004 till 20.8.2004. He then again remained absent from work for 11 days without leave or information. However, on his request he was again employed on 1.9.2004 and worked only upto 20.10.2004. From 21.10.2004 the applicant again absented himself from work without leave or information and kept silent and sleeping upto 22.9.2007 i.e. for 3 years when he woke up and sent a Demand Notice to the Secretary, HPSEB, Shimla, the Superintending Engineer (OP) HPSEB, Mandi and the Additional Superintending Engineer, Electrical Division, HPSEB, Joginder Nagar H.P. which demand note culminated into the present reference. Whenever the services of the applicant were disengaged, it were disengaged on a/c of non availability of work after serving due notice as required by law. Otherwise it was he who remained absent from work without leave or information. Therefore, it is totally wrong and false to say that the applicant was ever disengaged without reasons for not telling him complete 240 days as alleged.
2. The contents of this para are totally wrong and as such are vehemently denied. It is wrong on his part to allege that the service of the applicant were terminated on 21.10.2004. Fact of the matter is that he absented himself from work without applying for leave and without information. Which fact is fortified from the conduct of the applicant himself. Had his services been terminated as alleged, he would not have kept silent for 3 long years. It is also wrong that applicant has completed 240 days in any calendar year neither Section 25-B nor Section 25-F of the Industrial Disputes Act, 1947 are applicable in his case.
  3. The contents of this para are also totally false and baseless. No person junior to him has been retained in service. The persons mentioned in this para are all senior to him and they have also not played truant to the job like the applicant as explained in reply para 1 above. There is no violation of Section 25-G of the Industrial Disputes Act, 1947.
  4. The contents of this para of the claim petition are also partly false and baseless. It is incorrect that the said Piar Chand was engaged on 25.2.1999. As a matter of fact he was initially engaged on 26.1.1997 as daily waged Beldar. It is correct that as a consequence to filing of claim petition by the said Piar Chand is Ref. No.401/2002 (RBT No.493/2004) which was decided by the Labour Court in his favour and dismissal of Civil Writ Petition No.1166/2005 on dated 29.11.2005 filed against the award of the Labour Court, his services were re-engaged. It is also correct that he was re-appointed on regular basis on regularization of his services. It is incorrect that any rules as alleged was violated by reengaging him, he was re-engaged on the order passed by the Hon'ble High Court of H.P. as aforesaid. Copy of order passed by the Labour Court in Ref. No.401/02 (RBT No.493/04) is annexed as (Annexure-RA-IV) It has been pleaded that the services of the petitioner were never terminated. In fact after 20.10.2004, he absented from duty without any reason and giving the information regarding his absence. No provisions of the Act have been infringed. The petition is false. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.
  4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that he never abandoned the job.

Rather, his services were disengaged by the respondent from time to time and finally terminated on 21.10.2004 in violation of the law. The services of Sh. Piar Chand were engaged by the respondent w.e.f. 25.2.1999. He was removed from service in the month of April, 1999. Thereafter, he was re-employed by the respondent in the month of February, 2007 without giving him (petitioner) an opportunity of re-employment.

5. Per order dated 28.2.2011, below given issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 21.10.2004 is in violation of the provision of Section 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the claim petition is barred by vice of delay and laches as alleged. If so, to what effect?

. .OPR

3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : No

Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Sher Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record Mark-A i.e. the copy of service particulars of daily waged beldar as it stood on 30.9.2007 in respect of the office of the respondent. In the cross-examination, he admitted that he absented from duty from time to time as contended by the respondent. He admitted that he did not attend to his duties on 21.10.2004 i.e. the date of his disengagement. He denied that after the said date he did not approach the respondent for reemployment. He refuted that he was not retrenched by the respondent. He admitted that the demand notice was issued by him in the year 2007. He denied that no person junior to him has been retained in service by the respondent. He admitted that Sh. Piar Chand has been employed on 26.1.1997 as per orders of the Court. He denied that he has given a phoney statement.

9. Conversely, Sh. Parvesh Thakur, Additional Superintending Engineer, Electrical Division, HPSEBL, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He also placed on the record Exhibits RW1/B to D i.e. the copies of various notices which were served upon the petitioner intimating him that his services will stand terminated. Further, he produced Mark-X i.e. the copy of the award dated 4.8.2005 passed by this Court in Reference No.401/2002 titled as Sh. Piar Chand vs. Resident Engineer, HPSEB, Bassi Power House, Joginder Nagar and another. In the cross-examination, he stated that Ex. RW1/E is the man days chart of the petitioner. He admitted that the petitioner was removed from service on 21.10.2004 after giving a notice. No retrenchment compensation was paid to the petitioner. He admitted that the petitioner had completed 240 days of continuous service in 12 calendar months preceding the date of his retrenchment. He also admitted that as per Mark-X Sh. Piar Chand has been re-employed and paid

50% back wages. Sh. Piar Chand had worked only for 37 days. He admitted that the services of Sh. Piar Chand have now been regularized. Mark-A i.e. the list of daily waged beldar bears his signatures. He admitted that some of the workmen whose names figure in Mark-A have been employed after the year 1998. Self stated, all of them have been employed as per the orders of the Court. He admitted that when the services of Sh. Piar Chand were re-engaged in the year 2007 the petitioner was not called. Volunteered, Sh. Piar Chand has been re-employed as per the orders of the Court.

10. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on the muster rolls w.e.f. 25.4.1982 and he worked as such intermittently. Version of the respondent is that the petitioner was never removed from service w.e.f. 21.10.2004 as alleged. Rather, he abandoned the job of his own accord and free will. It is common knowledge that the abandonment has to be proved by the respondent/employer like any other fact. There is nothing on the record to show that the respondent had sent a notice to the petitioner calling upon him to resume his duties. Further, the person, if any, who verbally asked the petitioner on behalf of the respondent to join the duties has not been brought to the witness box. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Therefore, the plea of abandonment set up by the respondent is not established.

11. From the statement made by the respondent (RW1) coupled with the man days chart Ex. RW1/E, it can be gathered that the petitioner had completed 240 days of continuous service in 12 calendar months anterior to the date of his retrenchment i.e. 21.10.2004. There is nothing on the file to show that one month's notice in writing indicating the reasons for retrenchment or the retrenchment compensation were paid by the respondent to the petitioner. Therefore, it can be safely said that the provisions of Section 25-F of the Act have been violated by the respondent.

12. Not only this, it is an admitted fact that no opportunity of reemployment was given to the petitioner by the respondent. Several persons including Sh. Piar Chand were employed by the respondent after disengaging the services of the petitioner. The principle of 'last come first go' has not been followed by the respondent. His (respondent's) action also infringes Sections 25-G and 25-H of the Act.

13. So far as the payment of back wages is concerned I will like to say that the petitioner must be doing some job/work to make both the ends meet after the date of his illegal termination. It cannot be said that the petitioner was not gainfully employed during the period he was out of the job.

14. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO.2

15. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

16. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

17. This issue is also decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO.3)**

18. In view of my findings on the aforesaid issues, the reference in hand succeeds and the same is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal retrenchment i.e. 21.10.2004 except back wages. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of April, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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### **IN THE COURT OF RAJAN GUPTA PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 2/2010**

**Date of Institution : 16.1.2010**

**Date of Decision : 29.02.2012**

Shri Hans Raj s/o Shri Churru Ram, r/o Village Pukhari, P.O. Kakian, Tehsil & District Chamba, H.P.

...Petitioner

Versus

Executive Officer, Municipal Committee Chamba, District Chamba, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajinder Thakur, Adv. vice  
Sh. Akshay Jaryal, Adv.

For the Respondent : None/Exparte.

**AWARD**

The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Hans Raj s/o Shri Churru Ram by the Executive Officer, Municipal Committee Chamba, District Chamba, H.P. w.e.f. 01.06.2002, and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim) is that he was working with the respondent as a daily paid beldar in the year 1984. He worked continuously upto the year 2002. His services were disengaged on 1st June, 2002 without giving an opportunity of being heard. He (petitioner) has rendered daily paid services from the year 1984 to 2002 and had completed 240 days. Some times he was provided the fictional breaks by the Employer so that he cannot complete 240 days and claim the benefit of regularization in service as per the latest policy of the State. Providing the fictional breaks amounts to unfair labour practice and is violative of the Industrial Disputes Act, 1947 (‘the Act’ for short). The act and conduct of the respondent contravenes the provisions of the Act and the basic principles of natural justice. Being a daily paid worker, his (petitioner’s) engagement and disengagement in service by the respondent has to be regulated as per the Act. The action of the respondent being wrong, illegal and arbitrary is unconstitutional and subject to the judicial review. Moreover, the action of the respondent is bad under Section 25-F of the Act. He (petitioner) requested the respondent to re-engage his services as he (respondent) has allowed some of the daily paid workers to continue in service and regularized their services, but in vain. This act of the respondent is violative of Sections 25-G and H of the Act. He (petitioner) had earlier moved OA (D) No.233/02 before the Hon’ble State Administrative Tribunal, Shimla. The said OA was disposed of by the Id. Tribunal with a direction to file it before the Appropriate Court/Forum.

As such, he (petitioner/applicant) prays that the “applicant may kindly be re-engaged along with relief of back wages, seniority, past service benefits and amount of compensation which may also be awarded in the interest of justice.”

3. On notice, one Shri Vivek Kumar, Clerk in the office of the respondent, appeared before this Court. As none appeared on behalf of the respondent subsequently, he was ordered to be heard ex parte on 06.01.2011 by my Id. Predecessor.

4. The applicant/petitioner/claimant stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in their entirety.

5. Ex. PW1/B is the copy of the order dated August 26, 2004 passed by a Division Bench of the Hon’ble State Administrative Tribunal in OA (D) No.233/02 titled as Shri Hans Raj vs. State of H.P. through Secretary, Local Self Government to the Govt. of Himachal Pradesh, at Shimla and others.

6. It is not the case of the petitioner that during the period he was allegedly given the fictional breaks by the respondent or is/was out of service, he remained idle and did not work or earn something to make both the ends meet.

7. The deposition made by the petitioner (PW1) goes un-rebutted and unchallenged on the file.

8. Section 25-F of the Act reads thus:

“25-F. **Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. There is nothing on the record to show that the provisions of the above noted Section were complied with by the respondent/employer before the termination of services of the applicant/petitioner. Therefore, it is held that the impugned retrenchment is invalid and inoperative in the eyes of law.

10. Such being the situation, the reference in hand is partly allowed exparte. The disengagement of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement except back-wages. Parties to bear their own costs. The reference is answered accordingly.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

12. File after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of February, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 234/2010**

**Date of Institution : 07.08.2010**

**Date of Decision : 05.03.2012**

Shri Jeet Ram s/o Shri Mahant Ram, r/o Village & P.O. Khurahal, Tehsil Sundernagar,  
Distt. Mandi, H.P.

...Petitioner

## Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jeet Ram s/o Shri Mahant Ram, by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during November, 1993 to December, 1998 and finally w.e.f. March, 1999 in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1993 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of March, 1999. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009 the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.322 in the month of October, 1993. He worked intermittently as per his own wish upto November, 1999. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily

waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of November, 1999. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 29.06.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner is violative of the provisions of Section 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . .OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? . . .OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Partly Yes
Issue No.2 :	Not Pressed
Issue No.3 :	No
Relief. :	Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO.1

8. The petitioner Shri Jeet Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its

entirety. He also placed on the record the man days chart Mark-A and the seniority list Mark-B. In the cross-examination, he admitted that he worked only for three months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C. In the cross-examination, he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Mark-A and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. March, 1999. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

## ISSUE NO. 2

13. Not pressed.

## ISSUE NO. 3

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 4)**

17. Taking into consideration my findings on the aforesaid issues the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 667/2008**

**Date of Institution : 29.10.2008**

**Date of Decision : 24.4.2012**

Shri Kasturi Lal s/o Shri Devia Ram, r/o Village Banni, P.O. Awahan, Tehsil Chowari, Distt. Chamba, H.P.

...Petitioner

Versus

The Divisional Forest Officer, Forest Division Dalhousie, Distt. Chamba, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Kasturi Lal s/o Sh. Devia Ram by the Divisional Forest Officer, Chamba w.e.f. January, 1999 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as beldar in the month of January, 1987 by the respondent. He was appointed in forest Beat Awanh, Forest Range Chowari, Division Dalhousie. Thereafter, he worked continuously without any break in service. On 1st January, 1999 his services were terminated by the respondent without any reason or giving any notice. He requested the respondent many times to re-engage him, but in vain. The respondent has failed to re-employ him despite the availability of work and funds. Certain persons junior to him, who are the favourites of the respondent namely S/Sh. Hans Raj and Mulakh Raj have been retained in service by the respondent. Now they have been appointed as regular beldars. The respondent has failed to comply with the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short). After the termination of his services he (petitioner) preferred O.A.(D) No. 404/1999 before the Hon'ble H.P. State Administrative Tribunal, Shimla, bench at Dharamshala. Such original application has been disposed of by the Hon'ble Tribunal with the remarks that it has no jurisdiction to deal with the matter. The Hon'ble Tribunal gave him (petitioner) the liberty to approach the appropriate Court/Forum. Thereafter, he served a demand notice dated 7.10.2006 upon the respondent but without any success. His services have been disengaged without any notice wrongly and illegally. He had completed 240 days of continuous service as beldar for more than 10 years under the respondent/department. He is, thus, entitled to re-engagement and regularization of his services in the regular pay scale. His services are deemed to be regularized w.e.f. 1st January, 1997 as per the judgment of the Hon'ble Apex Court in the cases titled as Mool Raj Upadhyya vs. State of H.P. and Ors., 1994 (2) SLR 377 and State of H.P. vs Gehar Singh and Ors., Latest HLJ 2006 (SC) 363.

As such, he (petitioner) prays that the respondent be directed to reinstate him on the post of beldar with continuity in service, back wages and all consequential benefits. He also prays that his services be ordered to be regularized w.e.f. 01.01.1997 as per the judgments of the Hon'ble Apex Court.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable as no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches. On merits, it has been owned that the services of the petitioner were engaged by him (respondent) as a daily paid beldar w.e.f. January, 1987. The petitioner worked intermittently from February, 1987 to January, 1999. The mandays chart of the petitioner is annexed as annexure-R-I to the reply. The services of the petitioner were never dispensed with as alleged. As a matter of fact, he abandoned the job of his own accord and free will. The petitioner never reported for duties. His services were engaged as and when he turned up at the time of the work which was under implementation. No person named as Sh. Mulakh Raj s/o Sh. Debo was engaged as per the record. The mandays chart of Sh. Mikhu Ram s/o Sh. Ramu is appended as annexure R-II to the reply. The petitioner abandoned the job to take up the whole time profession of agriculture to earn his livelihood. He is debarred from claiming parity with the workmen who served continuously under him (respondent). No provision of the Act has been violated. It stands admitted that the petitioner had instituted an original application before the Hon'ble Administrative Tribunal. The petitioner has not completed 240 days of continuous service in 12 months preceding the date of his alleged disengagement. The petitioner worked as a casual labourer from February, 1987 to January, 1999. He did not complete the required period of service for regularization as per the policy of the Government. He is thus neither eligible nor entitled to the regularization as claimed. The demand notice sent by the petitioner is unjustified. The law laid down in Mool Raj Upadhyya's case and Gehar Singh's case does not help the petitioner in any manner. The services of the petitioner were never dispensed with as alleged. He is not entitled to any relief. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 27.8.2011, below given issues were struck by my Id. Predecessor:
  1. Whether the disengagement of the petitioner w.e.f. January, 1999 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to? . .OPP
  2. Whether the reference is not maintainable as alleged. If so, to what effect? . .OPR
  3. Whether the reference is hit by vice of delay and laches as alleged. If so, to what effect? . .OPR
  4. Relief. . .OPR
6. I have heard the Id. counsel for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Kasturi Lal stepped into the dock as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Mark-A i.e. the copy of the order dated 20.9.2004 passed by the Hon'ble Tribunal in O.A. (D) No.404/99 titled as Kasturi Lal vs. State of H.P. & Ors. In the cross-examination, he denied that he left the job of his own in the year 1999. He admitted that the present industrial dispute was raised by him in the year 2006. Self stated, anterior to that he had preferred a case before the Hon'ble Tribunal. He denied that Sh. Mulakh Raj s/o Sh. Debo never served the respondent/department. He also denied that Sh. Hans Raj served the respondent/department continuously because of which his services have been regularized. Further, he denied that he could not complete 240 days of work as he absented from duties time and again. Nowadays he makes both the ends meet by doing the work of agriculture. He denied that he left the service of his own because of which he is not entitled to any compensation and re-employment.

9. Conversely, Sh. R.K. Kaushal, D.F.O. Dalhousie (respondent) appeared as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that Ex. RW1/A is the mandays chart pertaining to the petitioner. The latter absented from duty voluntarily. The petitioner is absent from January, 1999 onwards and left the job. Mandays chart of S/Sh. Hans Raj and Milkhu Ram is Ex. RW1/B. Both of them are senior to the petitioner. No person named as Mulakh Raj s/o Sh. Debo served the respondent/department. The instant industrial dispute was raked up by the petitioner at a belated stage in the year 2006. He (petitioner) is doing the work of agriculture. Ex. RW1/C is the copy of the demand notice which was received from the petitioner. Since the petitioner abandoned the job voluntarily, he is not entitled to any relief. In the cross-examination, he admitted that the petitioner joined the department in the year 1987 and worked continuously

upto the year 1999. He denied that the petitioner was removed from service without serving any notice. Volunteered, he abandoned the job. No retrenchment compensation was paid to the petitioner. He denied that other persons were employed after engaging the services of the petitioner and they are serving the department. He admitted that as per Ex.RW1/B, S/Sh. Hans Raj and Milkhu Ram are junior to the petitioner as they joined service in the year 1988.

10. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar w.e.f. February, 1987 and he worked intermittently upto January, 1999. The version of the respondent is that the petitioner was never retrenched from service. In fact, he abandoned the job of his own accord and free will. It is common knowledge that the abandonment has to be proved by the respondent/employer like any other fact. There is nothing on the record to show that the respondent had sent a notice to the petitioner calling upon him to resume his duties. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Therefore, the plea of abandonment set up by the respondent is not established.

11. From the mandays chart Ex. RW1/A placed on the record it becomes clear that the petitioner did not complete 240 days of continuous service in a block of 12 calendar months preceding the date/month of his termination i.e. January, 1999. Therefore, the provisions contained under Section 25-F of the Act will not come to the rescue of the petitioner.

12. As already mentioned, it is an admitted fact that the services of the petitioner were engaged by the respondent for the first time in the month of February, 1987 and he worked intermittently upto the month of January, 1999. Mandays chart Ex. RW1/B coupled with the admissions made by Sh. R.K. Kaushal (RW1) go to show that S/Sh. Hans Raj and Milkhu Ram were employed by the respondent/department in the year 1988 i.e. after engaging the services of the petitioner. Admittedly both of them are junior to the petitioner and are serving the respondent/department. This indicates that the principle of 'last come first go' has not been followed by the respondent. Moreover, there is nothing on the file to suggest that before engaging new/fresh hands an opportunity of re-employment was given to the petitioner. Therefore, the action of the respondent is violative of Sections 25-G and 25-H of the Act.

13. So far as the prayer of the petitioner for regularization of his services is concerned, I will like to say that in view of the observations made by our Hon'ble High Court in Gauri Dutt & ors., Petitioners vs. State of H.P., Respondent, Latest HLJ 2008 (HP) 366, he is not entitled to the same.

14. This issue has been answered accordingly.

## ISSUE NO. 2

15. Not pressed.

## ISSUE NO. 3

16. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

17. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

18. This issue is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 4)**

19. As a sequel to my findings on the aforesaid issues, the reference/petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. January, 1999 except back wages. Parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of April, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 231/2010**

**Date of Institution : 07.08.2010**

**Date of Decision : 05.03.2012**

Shri Nand Lal s/o Shri Sadhu Ram, r/o Village & P.O. Khurahal, Tehsil Sunder Nagar,  
Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Nand Lal s/o Shri Sadhu Ram, by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during September, 1996 to December, 1998 and finally w.e.f. March, 1999 in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1996 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of March, 1999. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009 the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.85 in the month of May, 1996. He worked only for two months i.e. the months of April and May in the years 1997 to 1999. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of May, 1999. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked

continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for re-employment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 29.06.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner is violative of the provisions of Section 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Shri Nand Lal stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Mark-A and the seniority list Mark-B. In the cross-examination, he admitted that he worked only for three months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C. In the cross-examination, he admitted that the seniority list have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Mark-A and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. March, 1999. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

## **ISSUE NO. 2**

13. Not pressed.

## **ISSUE NO. 3**

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 4)**

17. Taking into consideration my findings on the aforesaid issues the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 346/2009**

**Date of Institution : 23.5.2009**

**Date of Decision : 19.04.2012**

Shri Rajesh Kumar s/o Shri Nand Lal, r/o Village Jhalwan, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. B.K. Sood, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Rajesh Kumar s/o Shri Nand Lal workman, by The Executive Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P., w.e.f. 1.5.2005 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him are retained by the employer, is proper and justified? If not, what relief of service benefits and amount of compensation the above Ex-Worker is entitled to?”

2. After the receipt of the reference corrigendum dated 13th January, 2011 was received to the effect that the date of termination of workman Sh. Rajesh Kumar (petitioner) be read as ‘21.05.2000’ instead of ‘21.5.2005’.

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as daily rated beldar w.e.f. 10.10.1996 vide Muster Roll No.352. He worked under the Assistant Engineer, Electrical Sub Division, Joginder Nagar upto 24.12.1996. His services were dispensed with by a verbal order by the Assistant Engineer w.e.f. 25.12.1996. He (petitioner) was not provided muster rolls from 25.12.1996 to 03.10.1999. At the time of his termination i.e. on 26.12.1996 no show cause notice was given to him. The Assistant Engineer verbally told him that his services are no more required because of the non-availability of work and funds. He (petitioner) was also informed by the Assistant Engineer that as and when the work and funds are available, his name will be considered for re-employment. Thereafter his (petitioner's) services were re-engaged by the respondent on Muster Roll No.220 in the same Sub Division w.e.f. 04.10.1999. He worked upto 20.11.1999 per Muster Roll No.264. His services were again disengaged vide a verbal order by the Assistant Engineer. He remained out of the job from 21.11.1999 to 29.2.2000. His services were dispensed with so that he (petitioner) does not complete 240 days of continuous service. After that he was re-employed in the same capacity on 01.03.2000 per Muster Roll No.423 and worked upto 20.5.2000. Once again, his services were dispensed with by the respondent without any reason, notice and charge-sheet w.e.f. 21.5.2000. After the termination of his services he filed Original Application No.1293/2001 before the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla. On 06.3.2003, he sent a demand notice under Section 2-A of the Act to the respondent and Secretary of the Electricity Board calling upon them to reinstate him in service with all consequential benefits including the seniority. Copy of such notice was forwarded by him to the Conciliation Officer. The respondent in his reply dated 12.5.2003 preferred to the demand notice dated 06.3.2003 before the Conciliation Officer pleaded that he (petitioner) had worked only upto 20.11.1999. The mandays chart was also placed on the record by the respondent indicating that he (petitioner) did not work under the respondent after 20.11.1999. The conciliation proceedings closed without any settlement where after the appropriate Government sent a reference to this Court. The said reference was registered as Reference No.91/2004. In that reference, he (petitioner) filed his statement of claim. The respondent in his reply pointed out that he (petitioner) had worked upto 20.5.2000 and attached the mandays chart in this respect to the reply. Reference No.91/2004 was decided against him (petitioner) on 22.9.2006 being beyond its scope. Then he sent a fresh demand notice dated 09.12.2006 to the respondent. The copy of the notice was also sent to the Conciliation Officer, Mandi. His (petitioner's) demands were not accepted by the respondent because of which the instant reference has been forwarded to this Court/Tribunal by the appropriate Government. At the time of his retrenchment, 10 days notice bearing No.13545, dated 11.5.2000 was served upon him (petitioner) intimating that his services will come to an end w.e.f. 21.5.2000. The persons junior to him namely S/ Sh. Ramesh Kumar, Chet Ram, Ghanshyam, Ram Chander and Raj Kumar etc. have been retained in service by the respondent. The principle of 'last come first go' has not been followed by the respondent. After the termination of his services, the respondent has engaged new/fresh hands in the Division. The names of the new appointees are S/Sh. Birbal, Om Prakash, Subhash Chand and Sanjay Kumar. He (petitioner) was not given an opportunity of re-employment as per the notice dated 11.5.2000. The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (the Act for short). He (petitioner) belongs to a poor family. He has spent approximately Rs.30,000/- from 1999 till date for the redressal of his grievances. He is unemployed from the date of his illegal termination. As such, as is evident from the prayer clause of the petition/statement of claim the petitioner has claimed the following relief(s) in this petition:

"1. The Hon'ble Court may kindly be set aside the illegal termination dated 21.05.2000 vide letter dated 11.05.2000 and directed to respondent to reinstate his service with full back wages, seniority and in continuity of service with all consequential service benefits throughout".

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the petition is not maintainable. The same is time barred. The petition is bad on account of non-joinder of the necessary parties and mis-joinder of the parties. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar w.e.f. 10.10.1996. Muster Roll No.352 given by the petitioner is incorrect. The petitioner was employed as a temporary beldar in the department. At the time of his engagement, it was clearly told to him that he will not have any right whatsoever to claim the absorption in service as a regular beldar. The services of the petitioner were terminated by giving him a written notice dated 11.5.2000 as the same were no more required by the department. Copy of the notice is annexed as annexure R-I to the reply. It stands admitted that the petitioner served the respondent/department from time to time. He absented from work on different occasions of his own. No breaks were given to the petitioner as alleged. It has been denied that the petitioner was not allowed to complete 240 days of continuous service. The services of the petitioner were not disengaged as alleged. He in fact absented from work on 21.5.2000 without applying for leave and abandoned the job. So far as the earlier Reference No.91/2004 is concerned, the same is a matter of record. It has been admitted that the persons junior to the petitioner have been retained in service and the mandate of Section 25-G of the Act has been violated. The other persons, who are employed with him (respondent), are/were the casual workers. At the time of their engagement the work was available with the department. The petitioner did not come forward to seek re-employment. He (petitioner) is gainfully employed and is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs.

5. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It stands admitted that his (petitioner's) services were terminated by the respondent/department after giving the notice dated 11.5.2000 along with the other workmen namely S/Sh. Piar Chand and Sanju etc. S/Sh. Piar Chand and Sanju etc. have been re-employed by the respondent despite the fact that he (petitioner) is/was senior to them. He was not given an opportunity of reemployment. The respondent used to give him fictional breaks from time to time. He worked upto 20.5.2000. His services were finally terminated by the respondent w.e.f. 21.5.2000.

6. Per order dated 22.4.2010, below given issues were struck by my Id. Predecessor:

1. Whether the services of the petitioner were terminated on 21.05.2000 in contravention of the provision of Section 25-F of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?  
..OPP
2. Whether the respondent has retained person junior to the petitioner and violated the provision of Section 25-G of the Industrial Disputes Act, 1947. If so, to what effect?  
..OPP
3. Whether the reference is barred by time as alleged. If so, to what effect?  
..OPR
4. Whether the petition is bad for mis-joinder of the necessary party as alleged. If so, to what effect?  
..OPR
5. Relief.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	No
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed
Relief. :	Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUES No.1 and 2

9. Being interlinked and to avoid the repetition both these issues are taken up together for adjudication.

10. The petitioner Shri Rajesh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the copy of the demand notice dated 09.12.2006 served upon the respondent by him. Ex. PW1/C is the copy of the order dated March 1, 2006 pronounced by the Hon'ble Tribunal in O.A. No.1293/2001 titled as Rajesh Kumar vs. H.P. State Electricity Board and Ors. Mark-A is the copy of the seniority list/service particulars of daily waged beldars as it stood on 30.9.2007 in respect of the office of the respondent. In the cross-examination, he denied that 10 days notice dated 11.5.2000 was given to him by the respondent/Board before the termination of his services. He admitted that after 21.5.2000, no letter was written by him to the respondent/Board for re-engagement. He also admitted that earlier he had sent a demand notice dated 06.3.2003 to the respondent and his claim/reference was dismissed by the Court on 22.9.2006. He denied that he has instituted a phoney petition.

11. Conversely, Sh. Parvesh Thakur, Additional Superintending Engineer, Electrical Division, HPSEB Ltd., Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He also proved Ex. RW1/B i.e. the copy of the termination notice dated 11.5.2000 served upon the petitioner and seven other workmen by the Assistant Engineer, Electrical Sub Division, HPSEB, Joginder Nagar. Ex. RW1/C is the copy of the mandays chart relating to the petitioner. In the cross-examination, he admitted that when the petitioner was employed no written order was issued that his services have been engaged for a specific work. He admitted that the petitioner was removed from service w.e.f. 21.5.2000 after giving him a notice. Mark-A i.e. the service particulars/seniority list of the daily waged beldars bears his signatures. He admitted that some of the workmen whose names figure in Mark-A are still serving the department. No opportunity of re-employment was given to the petitioner. After 21.5.2000, no person has been appointed by the Board except on compassionate grounds and as per the orders of the Court. He admitted that Sh. Piar Chand had initially joined the service in the department/Board in the month of February, 1999. His services have been re-engaged in the year 2007 as per the orders of the Court.

12. Mark-A is the copy of the Award dated 22.9.2006 passed by this Court in Reference No.91/04 (RBT No.457/04) titled as Rajesh Kumar vs. Additional Superintending Engineer, HPSEB, Electrical Division, Joginder Nagar.

13. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar in the year 1996. It is not the case of the petitioner that he had completed 240 days of continuous service in a period of 12 calendar months preceding the date of

his termination i.e. 21.5.2000. From the mandays chart Ex. RW1/C placed on the record, it becomes clear that the petitioner served the respondent/Board intermittently from time to time. What to talk of completing 240 days of continuous service in a period of 12 calendar months as per Section 25-B of the Act, Ex. RW1/C goes to show that from the date of his initial engagement i.e. 10.10.1996 upto date the petitioner has not served the respondent for 240 days. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. It is an admitted fact that the notice dated 11.5.2000, the copy of which is Ex. RW1/B was served upon the petitioner and seven other workmen by the Assistant Engineer, Electrical Sub Division, HPSEB, Joginder Nagar. As per this notice, the services of the petitioner and others were disengaged w.e.f. 21.5.2000. It was mentioned in the notice that in future as and when the work will be started in the Sub Division, the workmen (including the petitioner) will be re-engaged as per the seniority. In para 8 of the reply, the respondent has categorically admitted that the persons junior to the petitioner namely S/Sh. Ramesh Kumar and Chet Ram etc. are still serving the respondent. The principle of 'last come first go' has not been followed by the respondent and he has contravened the provisions of Section 25-G of the Act.

15. Admittedly, one Sh. Piar Chand had joined the Board in the month of February, 1999. His services were re-engaged as per the orders of the Court in the year 2007. There is nothing on the record to show that at the time of engaging the new/fresh hands, an opportunity of re-employment was given to the petitioner. The act of the respondent is thus in derogation of Section 25-H of the Act.

16. Coming to the dismissal of the earlier Reference No.91/04 (RBT No.457/04) titled as Rajesh Kumar vs. The Additional Superintending Engineer, HPSEB, Joginder Nagar by this Court vide Award dated 22.9.2006, the copy of which is Mark-A, I will like to say that the same in no way comes to the rescue of the respondent. Browsing of Mark-A clarifies that the reference/claim petition was dismissed by this Court for the reason that after the termination of the services of the petitioner w.e.f. 20.11.1999 by the respondent, he was re-engaged. The Court came to the conclusion that the petitioner was disengaged w.e.f. 20.5.2000. Since it cannot travel beyond the scope of reference; the reference/claim petition is/was untenable.

17. These issues have been answered accordingly.

### ISSUE NO. 3

18. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

20. This issue is decided in favour of the petitioner and against the respondent.

**ISSUE NO. 4**

21. Not pressed.

**RELIEF (ISSUE NO. 5)**

22. As a sequel to my findings on the various issues, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 21.5.2000 without back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of April, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 240/2010**

**Date of Institution : 31.08.2010**

**Date of Decision : 05.03.2012**

Shri Ram Chand s/o Shri Krishan Chand, r/o Village & P.O. Khurahal, Tehsil Sunder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ram Chand s/o Sh. Krishan Chand by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during December, 1996 to March, 1999 and finally w.e.f. June, 1999, in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1996 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of June, 1999. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.279 in the month of August, 1996. He worked only for three months i.e. the months of August, September and October in the year 1996. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of June, 1997. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon’ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of ‘last come first go’ has been strictly adhered to. He (respondent) was never approached

by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in June, 1999 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Shri Ram Chand stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C. In the cross-examination, he admitted that he worked only for three months in the years 1996-1997 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C. In the cross-examination he admitted that the seniority

lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. June, 1999. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

## ISSUE NO. 2

13. Not pressed.

## ISSUE NO. 3

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

## RELIEF (ISSUE NO. 4)

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 239/2010**

**Date of Institution : 31.08.2010**

**Date of Decision : 05.03.2012**

Shri Ramesh Kumar s/o Shri Sukh Ram, r/o Village Khanyod, P.O. Khurahal, Tehsil Sunder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ramesh Kumar s/o Sh. Sukh Ram by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. w.e.f. 31.12.1997, in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1997 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of December, 1997. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the

provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of 'last come first go' has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short). As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.381 in the month of September, 1996. He worked only for two months i.e. the months of September and October in the year 1996. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of October, 1996. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues are struck by my ld. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service w.e.f. 31/12/97 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect? . . . OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Partly Yes Partly No
Issue No.2 :	Not Pressed
Issue No.3 :	No
Relief. :	Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Ramesh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C. In the cross-examination, he admitted that he worked only for two months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C. In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. December, 1997. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

**ISSUE NO. 2**

13. Not pressed.

**ISSUE NO. 3**

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 4)**

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 244/2010**

**Date of Institution : 31.08.2010**

**Date of Decision : 05.03.2012**

Shri Rattan Lal s/o Shri Sadhu Ram, r/o VPO Khurahal, Tehsil Sunder Nagar, Distt. Mandi,  
H.P.

...Petitioner

## Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Rattan Lal s/o Sh. Sadhu Ram by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. w.e.f. January, 1997, in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the ibid Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1995 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of January, 1997. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to ‘unfair labour practice’. The act and conduct of the respondent affected his (petitioner’s) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short). As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.279 in the month of September, 1996. He worked only for three months i.e. the months of September, October and November in the year 1996. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the

engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of September, 1996. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2009. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in January, 1997 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Shri Rattan Lal stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of

claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C. In the cross-examination, he admitted that he worked only for three months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C. In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. January, 1997. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

## ISSUE NO. 2

13. Not pressed.

## ISSUE NO. 3

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 4)**

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 243/2010**

**Date of Institution : 31.08.2010**

**Date of Decision : 05.03.2012**

Shri Shadi Lal s/o Shri Sant Ram, r/o Village & P.O. Khurahal, Tehsil Sunder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division Sundernagar, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Shadi Lal s/o Sh. Sant Ram by The Executive Engineer, H.P.P.W.D. Division Sunder Nagar, Distt. Mandi H.P. from time to time during December, 1996 to August, 1997 and finally w.e.f. October, 1997, in violation of provisions of Section 25-F of the ibid Act and not giving him opportunities of consideration for re-

employment by the employer from the dates his juniors are employed (as admitted), in violation of provisions of Section 25-G & H of the *ibid* Act, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was employed as beldar on daily wages in the year 1996 by the respondent in his Dehar/Slapper Section. He was retrenched by the respondent by a verbal order in the month of October, 1997. Neither he was given any show cause notice nor was informed regarding his misconduct. The respondent gave fictional breaks to him from time to time which amounts to 'unfair labour practice'. The act and conduct of the respondent affected his (petitioner's) continuity and seniority in service. His name has not been shown in the seniority list of the employees as per the Rules. The persons junior to him have been retained in service by the respondent. Their names duly figure in the seniority list which he (petitioner) has procured from the respondent by taking recourse to the provisions of Right to Information Act, 2005. From the year 1998 to 2009, the respondent has employed almost 92 fresh hands/workmen. The services of some of them have already been regularized. The principle of 'last come first go' has not been followed by the respondent. He (petitioner) requested the respondent time and again to give the employment, but in vain. He is unemployed till date. The action of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short). As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity in service, seniority and back wages.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim/demand. Preliminary objections have been taken to the effect that the petition is bad on account of delay and laches on the part of the petitioner. The petition is not maintainable as no legal or fundamental right of the petitioner has been infringed by him (respondent). On merits, it has been owned that the petitioner was engaged as daily waged workman vide muster roll No.279 in the month of September, 1996. He worked only for three months i.e. the months of September, October and November in the year 1996. The man days chart of the petitioner is appended as annexure R-1 to the reply. In the year 1996-1997, due to the special budgetary provisions for development and construction work, need was felt to engage temporary/casual daily paid workmen to meet the target of works and utilization of the funds. Accordingly, he (respondent) engaged the casual/daily waged workers including the petitioner. At the time of engagement of the petitioner and other workers, they were informed that the engagement will continue as per the allocation of the budget. Their services shall be co-terminus with the utilization of the funds. In view of the nature of work and funds, the services of the petitioner were disengaged in the month of September, 1996. The work was provided to the petitioner as per its availability and funds. No fictional breaks were ever given to the petitioner as alleged. Since the petitioner was employed as a casual/daily waged workman, his name was not required to be shown in the seniority list of the daily paid workmen working under him (respondent). The seniority list produced by the petitioner pertains to the workmen who were engaged against regular work and had worked continuously with him (respondent). The seniority list is attached as annexure R-II to the reply. Out of 92 workmen, the services of some of the workmen were re-engaged as per the direction of the Hon'ble H.P. State Administrative Tribunal. Some of the persons were appointed on compassionate grounds. No provision of the Act has been infringed. The principle of 'last come first go' has been strictly adhered to. He (respondent) was never approached by the petitioner for reemployment. The industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2008. The copy of the demand notice received from the petitioner is appended as annexure R-III to the reply. The work is being executed through regular beldars or the workmen who were engaged against regular work. The petitioner is gainfully

employed as an agriculturist and earns his livelihood. The petition is devoid of any merit. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was engaged by the respondent only due to the special budgetary provision for development and construction work.

5. Per order dated 20.04.2011, below given issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in granting fictional breaks and thereupon eventually terminating his service in October, 1997 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Shri Shadi Lal stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also placed on the record the man days chart Ex. PW1/B and the seniority list Ex. PW1/C. In the cross-examination, he admitted that he worked only for three months in the year 1996 and did not complete 240 days of continuous service. He also admitted that the instant industrial dispute was raised by him in the year 2008. Further, he admitted that he owns the land. He denied that he and his family members make both the ends meet by doing the agricultural work. He refuted that he has instituted a phoney petition to get the employment.

9. To the contrary, Sh. Suresh Kapoor, Executive Engineer, H.P.P.W.D. Division Sundernagar testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He also placed on the record the man days chart Ex. RW1/B and the seniority list Ex. RW1/C. In the cross-examination he admitted that the seniority lists have been issued by their office. He also admitted that the persons junior to the petitioner are still serving the department and their names figure in the seniority list. No opportunity of re-employment was given to the petitioner before engaging the fresh hands. He admitted that no retrenchment compensation was paid to the petitioner.

10. From the man days chart Ex. PW1/B and RW1/B, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date/month of retrenchment i.e. October, 1997. Therefore it cannot be said that he was in 'continuous service for not less than one year' under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

11. It is the admitted case of the respondent (RW1) that he has employed the new/fresh hands and no opportunity of re-employment was given to the petitioner. It is also an admitted fact that the persons junior to the petitioner are serving the respondent/department. Such being the situation, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. The mandate of Sections 25-G and 25-H has not been complied with by the respondent.

12. This issue has been answered accordingly.

## ISSUE NO.2

13. Not pressed.

## ISSUE NO.3

14. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

15. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

16. This issue is decided in favour of the petitioner and against the respondent.

## RELIEF (ISSUE NO.4)

17. Taking into consideration my findings on the aforesaid issues, the instant reference is allowed in part. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2012.

By order,  
**RAJAN GUPTA,**  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 284/2009**

**Date of Institution : 29-05-2009**

**Date of Decision : 09-04-2012**

Smt. Bhaga Devi (now dead) w/o Sh. Prem Singh R/O Village Ratkail, P.O. Sajau Piplu, Tehsil Sarkaghat, District Mandi, H.P. through her legal heirs:

1. Sh. Suresh Kumar s/o Sh. Prem Singh.
2. Miss Kirna Devi d/o Sh. Prem Singh.
3. Miss Rama Devi d/o Sh. Prem Singh.

....Petitioner(s).

Versus

The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.

.....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. N.L. Kaundal, A.R.  
Sh. Vijay Kaundal, Adv.  
For the Respondent. : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Bhaga Devi w/o Sh. Prem Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner Smt. Bhaga Devi (deceased) as set out in the statement of claim/demand is that her services were engaged by the respondent /department as a daily wager in the year 1999. She worked continuously under the Assistant Engineer, Sub Division, Mandap up to 07-07-2005. On 08-07-2005, her services were terminated by the respondent vide letter No.3620-23, dated 4th July, 2005. At the time of her (petitioner's) retrenchment, she was paid the compensation amounting to Rs. 10,290/- vide bank draft No. 064598, dated 04-07-2005, payable at Co-operative Bank Dharampur. During pendency of the matter before the Labour Authorities, Smt. Bhaga Devi (petitioner) expired on 17-06-2008. The claimants are her legal heirs. At the time of the retrenchment of the deceased petitioner the principle of ‘ Last Come First Go’ was not followed by the respondent. The persons junior to her (petitioner) namely S/Sh. Subhash Chand , Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram and Dharampal etc. have been appointed by the respondent as Beldar in the month of November, 1998. Not only this, one Sh. Shashi Kant was appointed in the year 2000. The services of the above named workmen have not been dispensed with by the respondent. Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She (Mamta Devi) is junior to her (petitioner). Smt. Mamta Devi was retrenched by the respondent along with her (petitioner) w.e.f. 08-07-2005. The services of Smt. Mamta Devi have been reengaged by the respondent in the year 2007 and she is still serving the respondent

/department. She (petitioner) was not given an opportunity of reemployment. This Court has already set-aside the retrenchment orders dated 02-07-2005 and 04-07-2005 passed by the respondent. More than 600 daily waged workmen have been reinstated by the department. They have also been granted the back wages to the tune of Rs. 50,000/- each. The act of the respondent is violative of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short) As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner(s) has /have claimed the following relief(s) in this petition:-

“That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02-07-2005/04-07-2005 and directed to respondent to pay amounting Rs. 50,000/- in the favour of claimants/legal heirs and other consequential service benefits throughout.”

3. On notice, the respondent appeared. He filed the detailed reply controverting the averments made in the petition. Preliminary objections have been taken to the effect that the petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed material facts from the Court. The reference is not maintainable as other efficacious remedy is available to the petitioner(s). The petitioner is estopped from filing the petition by her act and conduct. On merits, it has been owned that late Smt. Bhaga Devi (petitioner) was employed as a daily wager in the year 1999 and she worked continuously up to 07-07-2005. It has been admitted that the services of the petitioner were dispensed with on 08-07-2005 per letter dated 04-07-2005 and retrenchment compensation amounting to Rs. 10, 290/- was paid to her. Further, the facts that Smt. Bhaga Devi died on 17-06-2008 and this Court has already set-aside the retrenchment orders dated 02-07-2005 and 04-07-2005 stand admitted. It also stands admitted that more than 600 daily waged workmen have been reinstated by the department and each one of them was granted lump sum amount of Rs. 50,000/- as back wages. It is admitted that some junior daily waged workmen are working under him (respondent). The juniors are working due to non-availability of seniors who were transferred from other division/ sub division. The retrenchment notices have been served upon the persons who are junior to the petitioner and are surplus. It has been owned that Smt. Mamta Devi w/o Sh. Hans Raj was reengaged by him (respondent). She has been reengaged on compassionate grounds as her husband (Sh. Hans Raj) passed away in an accident. The petitioner was retrenched after adopting all the codal formalities by the competent authority. No provision of the Act has been flouted. The reference is devoid of any merit. In these circumstances, the respondent prays that the reference in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner(s). 4A. Vide order dated 28-10-2011 following issues were struck by my ld. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so, to what effect?  
....OPP.
2. Whether the termination of the petitioner is also violative of the provisions under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect?  
...OPP.
3. Whether the petitioner suffers from the vice of delay and laches, as alleged. If so, to what effect?  
...OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect?  
...OPR.
5. Relief.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file.

6. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Not Pressed.
Issue No.2 :	Yes.
Issue No.3 :	Not Pressed.
Issue No.4 :	Not Pressed.
Relief. :	Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE No. 2

7. Sh. Suresh Kumar, who happens to be the son and one of the legal heirs of the deceased petitioner, stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition. He also placed on record the legal heirs certificate Ex. PW1/B and the death certificate Ex. PW1/C relating to Smt. Bhaga Devi (petitioner). In the cross-examination, he admitted that his mother (deceased petitioner) worked as daily waged beldar up-to July, 2005. He admitted that the services of his mother were terminated by the respondent/department after serving her a notice and paying three months salary as retrenchment compensation. He does not know that the termination order was issued in accordance with the directions given by the Chief Engineer. He admitted that 1087 other workers were removed from service when the services of the deceased petitioner were dispensed with. He denied that no person junior to the petitioner was retained in service by the respondent. 7A. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD Division, Dharampur, testified as RW1. He corroborated on oath the contents of the reply filed by him. He also deposed that the services of the petitioner were dispensed with as per law. Chief Engineer, HPPWD, Central Zone, Mandi was appointed as specified authority per notification, the copy of which is Ex. RW1/A, under Section 25-N of the Act. The petitioner was retrenched after seeking permission from the specified authority. Her services were terminated by giving three months notice and paying the retrenchment compensation. In the cross-examination he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her service. Ex. RW1/A2 is the seniority list/ year wise mandays chart in respect of the workman namely Sh. Shashi Kant s/o Sh. Bihari Lal. He admitted that Smt. Mamta Devi w/o Sh. Hans Raj was engaged as a daily waged beldar in HPPWD, Division Dharampur and her services were terminated w.e.f. 08-07-2005. Ex. RW1/A3 is the copy of the termination notice in respect of Smt. Mamta Devi. He admitted that Smt. Mamta Devi was reengaged as a daily waged beldar in the year 2008. Self stated, she was reengaged on compassionate grounds as her husband expired in an accident. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi as a daily wager, no opportunity was given to the petitioner for reemployment. He (RW1) cannot say that Sh. Hans Raj (the husband of Smt. Mamta Devi) left the land of the dying in the year 1999. He denied that at the time of the termination of the services of the petitioner, the work and funds were available.

8. It is the admitted case of the respondent that late Smt. Bhaga Devi (petitioner) was employed as a daily wager in the year 1999 and she worked continuously under the Assistant Engineer, Sub Division, Mandap up-to 07-07-2005. It is also an admitted fact that the services of the petitioner were disengaged w.e.f. 08-07-2005.

9. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of

termination of her services. There is nothing on record to show that before the retrenchment of the petitioner the provisions of Section 25-F of the Act were complied with by the respondent. Therefore, the termination of the services of the petitioner is bad in the eyes of law.

10. Not only this, from the evidence available on record, it becomes clear that the persons junior to the petitioner are still serving the department. New persons including Smt. Mamta Devi and Sh. Shashi Kant were engaged. There is nothing on the file to show that before engaging the fresh hands, an opportunity of reemployment was given to the deceased petitioner. The act of the respondent, thus, contravenes the provisions of Sections 25-G and 25-H of the Act as well.

11. Admittedly, the petitioner has died. Therefore, no order of reinstatement can be passed in her favour.

12. The Hon'ble High Court of Himachal Pradesh while dealing with similar matters arising out of the Awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi District vide CWP No. 1387/2010 and other connected matters decided on 13.05.2010 has held the workman entitled to a lump sum amount of Rs. 50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent, the Awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among at the workmen, the petitioner shall be entitled to an amount of Rs. 50,000/- in lump sum in lieu of backwages, litigation expenses and compensation.

13. This issue is decided in favour of the petitioner and against the respondent.

#### **ISSUES NO. 1, 3 & 4**

14. Not Pressed

#### **RELIEF(ISSUE NO.5)**

15. Taking into account my findings on the aforesaid issues, the instant reference is partly allowed. The retrenchment of the petitioner is set aside and quashed. She is held entitled to a lump sum amount of Rs. 50,000/- in lieu of back wages, litigation expenses and compensation. Such amount will be disbursed in favour of the legal heirs of the deceased petitioner in equal shares.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Govt. for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of April, 2012.

By order,  
**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 154/2010**

**Date of Institution : 20.5.2010**

**Date of Decision : 25.04.2012**

Shri Hem Singh s/o Shri Gontru Ram, r/o Village Thati, P.O. Kot, Sub Tehsil Dharampur,  
District Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District Mandi,  
H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :	Sh. N.L. Kaundal, AR
	Sh. Vijay Kaundal, Adv.
For the Respondent :	Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Hem Singh s/o Shri Gontru Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 09.02.04 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer.”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar on daily wages by the respondent on the muster roll in the month of July, 1998. He worked continuously as such upto 8.2.2004. During the above said period he had completed 240 days of work in each calendar year and the last 12 calendar months preceding the date of his termination. On 09.02.2004, his services were terminated by the respondent along with 1697 daily waged workmen. At the time of dispensing with his services, he (petitioner) was paid the retrenchment compensation. While disengaging his services, the principle of ‘last come first go’ has not been followed by the respondent. The persons junior to him namely S/Sh. Subhash Chand, Shashi Kant, Bidhi Chand, Dharampal and Inder Singh etc. have been retained in service by the respondent. After the termination of his (petitioner’s) services and the other workmen numbering 1697, in the months of June and July, 2004, some of the workmen have been re-engaged by the respondent. He was not given an opportunity of re-employment. In the month of December, 2004, he approached the respondent as well as the Assistant Engineer, Sub Division, Dharampur to provide him the work on the basis of his seniority. The respondent and the Assistant Engineer conveyed to him (petitioner) verbally that they are not in a position to provide him the job being surplus. The respondent and the Assistant Engineer further told him (petitioner) that the retrenchment process of the other workmen who are surplus is still continuing because of which his services cannot be re-engaged. S/Sh. Balak Ram, Rakesh Kumar, Desh Raj, Abdul Razzak and Mansa Ram etc. who were retrenched on 09.02.2004 alongwith him (petitioner) have been reemployed by the respondent in the months of June and July, 2004 despite the fact that they

are/were junior to him. Not only this, on 08.7.2005 again the respondent retrenched 1087 daily waged workmen. Those workers raised the dispute under the Industrial Disputes Act, 1947 ('the Act' for short) in the years 2007 and 2008. Approximately 500 workmen have been reinstated by the respondent and paid 50 % back wages with all consequential service benefits including the seniority as per the order passed by this Court. The retrenchment order dated 08.7.2005 has been quashed by this Court/Tribunal. The persons who have been reinstated in service and paid 50% back wages are S/Sh. Vijay Kumar, Megh Singh and Sanjay Kumar etc. All of them are/were junior to him (petitioner). The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also in contravention of the provisions contained under Sections 25-G and 25-H of the Act. He (petitioner) is unemployed from the date of his illegal termination. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 09.02.2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court and is estopped from filing the petition by his act and conduct. The present petition/statement of claim is not maintainable as another efficacious remedy at the first instance is/was available to the petitioner. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on the muster roll in the month of July, 1998 and he worked continuously upto 08.02.2004. It has been admitted that the petitioner had completed 240 days of work in all the years and the last 12 calendar months preceding the date of his termination. Further, it stands admitted that the services of the petitioner and 1697 other Workmen were terminated on 09.02.2004 and they were paid the retrenchment compensation. The petitioner and the other workmen were retrenched after adopting all the codal formalities. Thereafter, as per the orders of the Government, the workmen were reinstated. The petitioner did not join his duties. No person junior to the petitioner has been retained in service or re-engaged. It has been admitted that 1087 workmen were retrenched on 07.07.2005. Those workmen challenged the retrenchment orders and have been retained in service as per the orders of the Court. Since the petitioner failed to join his duties as per the orders of the Government, the question of retaining the persons junior to him in service or violating the provisions of the Act does not arise. The petitioner never approached him (respondent) for reinstatement. The fact that the petitioner is not gainfully employed from the date of his retrenchment has been denied for want of knowledge. The petition is devoid of any merit. In these circumstances the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 29.8.2011, below given issues were struck by my ld. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?  
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?  
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?  
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?  
..OPR
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Yes  
 Issue No.3 : No  
 Issue No.4 : Not pressed.  
 Relief. : Reference/petition allowed vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Sh. Hem Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the seniority list/year-wise mandays chart in respect of the workman namely Sh. Shashi Kant s/o Shri Bihari Lal who was junior to him and retained in service by the respondent at the time of the termination of his (petitioner's) services. Further, he proved Ex. PW1/C i.e. the seniority list of daily waged beldar in respect of the respondent who had completed 8 years of service upto 31.3.2008. In the cross-examination, he admitted that he had joined as daily waged beldar in 1998 and worked as such upto February, 2004. He also admitted that the respondent/department had terminated his services by giving him a notice and paying three months salary as retrenchment compensation. He admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of the new Division, the labour became surplus. He even denied that no person junior to him was retained in service by the respondent at the time of his retrenchment. He denied that he did not rejoin the service willingly at the relevant time. He controverted that he is gainfully employed as an agriculturist. He denied that the instant industrial dispute was raised by him at a belated stage and he is not entitled to any relief.

10. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He

also placed on the record Ex. RW1/A i.e. the mandays chart relating to the petitioner. He continued to state that the services of the petitioner were terminated being surplus and due to shortage of the funds. Before terminating the services of the petitioner, the then Executive Engineer, HPPWD, Dharampur had sought the permission from the specified authority namely the then Chief Engineer, HPPWD, Central Zone, Mandi. The specified authority after affording an opportunity of being heard to the petitioner granted the permission to terminate his services. After that, the services of the petitioner were disengaged by giving him a notice and paying the retrenchment compensation as per Section 25-F of the Act. Thereafter, as per memorandum of settlement dated 29.3.2004 (Ex. RW1/B) executed between him (respondent) and the representatives of the workers, it was agreed that all the retrenched workmen numbering 1858 of different categories including the petitioner will be re-engaged up-to 16.4.2004. The retrenched workers were also supposed to give their joining up-to 30.4.2004. The petitioner failed to resume his duties as per the memorandum of settlement Ex. RW1/B. For this reason, he could not be re-engaged. The present dispute has been raked up by the petitioner at a belated stage in the year 2008. He is working as an agriculturist and earns his livelihood by doing the work of agriculture. As the petitioner failed to join the service as per the terms and conditions of the memorandum of settlement, he is not entitled to any benefit. In the cross-examination, he admitted that the petitioner worked for more than 240 days during the period of 12 calendar months preceding the date of his termination. He denied that the persons junior to the petitioner were retained in service at the time of the termination of the services of the petitioner. He admitted that the seniority lists Exts. PW1/B and C were issued by the office. He also admitted that one Smt. Mamta Devi w/o Sh. Hans Raj was engaged as daily waged beldar and her services were terminated w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-employed on compassionate grounds as her husband Sh. Hans Raj died while serving the HPPWD. He refuted that Smt. Mamta Devi was junior to the petitioner. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Sh. Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that the memorandum of settlement was neither to the knowledge of the petitioner nor he (petitioner) had authorized any person to sign it on his behalf. He admitted that no notice to rejoin as on 30.4.2004 and, thereafter, was issued to the petitioner. Further, he admitted that no inquiry was conducted against the petitioner and a notice of one month was not given to him.

11. It is the admitted case of the respondent that the services of the petitioner were engaged as daily waged beldar w.e.f. July, 1998 and he worked as such continuously upto 08.02.2004. It is also the admitted case of the respondent that the petitioner had completed 240 days of work in each calendar year of his service as well as the block of last 12 calendar months preceding the date of his termination i.e. 09.02.2004. The respondent in his reply nowhere pleaded that the services of the petitioner and other workmen were dispensed with after seeking permission from the specified authority viz Chief Engineer, HPPWD, Central Zone, Mandi. Therefore, the evidence of the respondent to that effect being beyond his pleadings cannot be read. Otherwise too, it is an admitted fact that the retrenchment orders passed by the respondent by taking recourse to the provisions of Section 25-N of the Act have already been set aside by this Court and affirmed by the Hon'ble High Court of Himachal Pradesh.

12. It is an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 09.02.2004. The contention of the respondent is that before the termination of the services of the petitioner, a notice was given to him. The petitioner was also paid the retrenchment compensation. The copy of the notice allegedly served upon the petitioner by the respondent has not been placed on the record. Since a material document has been withheld by the respondent, an adverse inference under Section 114 (g) of the Indian Evidence Act has to be drawn against him.

13. Section 25-F of the Act reads thus:

**“25-F. Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. There is nothing on the record to show that the retrenchment notice allegedly served upon the petitioner by the respondent was in conformity with the provisions of Section 25-F of the Act. The respondent (RW1) in his cross-examination admitted that neither an inquiry was conducted against the petitioner nor a notice of one month was given to him. This clearly establishes that the mandatory provisions of Section 25-F of the Act have not been adhered to by the respondent before disengaging the services of the petitioner.

15. From the oral and documentary evidence placed on the record, it becomes clear that the petitioner had completed 240 days of continuous service in a period of 12 calendar months preceding the date of his retrenchment. Not only this, the persons junior to the petitioner have been retained in service by the respondent. There is nothing on the file to show that before engaging the new/fresh hands, an opportunity of re-employment was given to the petitioner. The principle of 'last come first go' has not been followed by the respondent. His act is violative of Sections 25-G and 25-H of the Act.

16. Coming to the assertion of the respondent that the petitioner failed to join his duties as per the memorandum of settlement dated 29.3.2004, the copy of which is Ex. RW1/B, I will like to say that there is nothing on the file to show that the petitioner was a party to the memorandum of settlement or had authorized someone to sign the same on his behalf. There is not even an iota of evidence on the record to show that the memorandum of settlement was to the knowledge of the petitioner. It is the admitted case of the respondent that no notice was sent to the petitioner on 30.4.2004 and, thereafter, calling upon him to resume his duties as per the memorandum of settlement allegedly arrived at between the parties.

17. It is an admitted fact that thousands of workmen were retrenched by the respondent w.e.f. 09.02.2004 to 08.07.2005. The retrenchment orders relating to a number of workmen have already been set aside by this Court. Pursuant to the Awards passed by this Court as affirmed by the Hon'ble High Court of Himachal Pradesh, a number of workmen have been re-employed and paid a lump sum amount of Rs. 50,000/- in lieu of back wages, litigation expenses and compensation. To avoid discrimination amongst the workmen, I feel that the petitioner is also entitled to a sum of Rs. 50,000/- on account of back wages and compensation etc. His retrenchment is bad in the eyes of law.

18. These issues are decided in favour of the petitioner and against the respondent.

**ISSUE NO. 3**

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. For entitlement to back wages on reinstatement of an employee, the initial burden lies upon him to show that he was not gainfully employed. Only thereafter, the employer is required to rebut the same. The bald statement made by the petitioner (PW1) to the effect that from the date of his termination up till now he is unemployed cannot be taken as a gospel truth. The petitioner must be doing some work of agriculture etc. to make both the ends meet.

21A. This issue is decided in favour of the petitioner and against the respondent.

**ISSUE NO.4**

22. Not pressed.

**RELIEF (ISSUE NO.5)**

23. As a sequel to my findings on the above issues, the instant reference/claim petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity in service and seniority from the date of his illegal termination. The petitioner is also held entitled to a lump sum amount of Rs. 50,000/- in lieu of back wages and compensation etc. The respondent is directed to regularize the services of the petitioner as per the policies framed by the State Government from time to time. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of April, 2012.

By order,  
**RAJAN GUPTA,**  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 238/2010**

**Date of Institution : 7.8.2010**

**Date of Decision : 25.04.2012**

Shri Jiwan Lal s/o Shri Bhagi Ram, r/o Village Kalswayi, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :	Sh. N.L. Kaundal, AR Sh. Vijay Kaundal, Adv.
For the Respondent :	Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Jiwan Lal s/o Shri Bhagi Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 09.02.04 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer.”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar on daily wages by the respondent on the muster roll in the month of December, 1998. He worked continuously as such upto 08.02.2004. During the above said period, he had completed 240 days of work in each calendar year and the last 12 calendar months preceding the date of his termination. On 09.02.2004, his services were terminated by the respondent along with 1697 daily waged workmen. At the time of dispensing with his services, he (petitioner) was paid the retrenchment compensation. While disengaging his services the principle of ‘last come first go’ has not been followed by the respondent. The persons junior to him namely S/Sh. Subhash Chand, Shashi Kant, Bidhi Chand, Dharampal and Inder Singh etc. have been retained in service by the respondent. After the termination of his (petitioner’s) services and the other workmen numbering 1697, in the months of June and July, 2004, some of the workmen have been re-engaged by the respondent. He was not given an opportunity of re-employment. In the month of December, 2004, he approached the respondent as well as the Assistant Engineer, Sub Division, Dharampur to provide him the work on the basis of his seniority. The respondent and the Assistant Engineer conveyed to him (petitioner) verbally that they are not in a position to provide him the job being surplus. The respondent and the Assistant Engineer further told him (petitioner) that the retrenchment process of the other workmen who are surplus is still continuing because of which his services cannot be re-engaged. S/Sh. Balak Ram, Rakesh Kumar, Desh Raj, Abdul Razzak and Mansa Ram etc., who were retrenched on 09.02.2004 alongwith him (petitioner) have been reemployed by the respondent in the months of June and July, 2004 despite the fact that they are/were junior to him. Not only this, on 08.7.2005 again the respondent retrenched 1087 daily

waged workmen. Those workers raised the dispute under the Industrial Disputes Act, 1947 ('the Act' for short) in the years 2007 and 2008. Approximately 500 workmen have been reinstated by the respondent and paid 50 % back wages with all consequential service benefits including the seniority as per the order passed by this Court. The retrenchment order dated 08.7.2005 has been quashed by this Court/Tribunal. The persons who have been reinstated in service and paid 50% back wages are S/Sh. Vijay Kumar, Megh Singh and Sanjay Kumar etc. All of them are/were junior to him (petitioner). The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also in contravention of the provisions contained under Sections 25-G and 25-H of the Act. He (petitioner) is unemployed from the date of his illegal termination. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 09.02.2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court and is estopped from filing the petition by his act and conduct. The present petition/statement of claim is not maintainable as another efficacious remedy at the first instance is/was available to the petitioner. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on the muster roll in the month of December, 1998 and he worked continuously upto 08.02.2004. It has been admitted that the petitioner had completed 240 days of work in all the years and the last 12 calendar months preceding the date of his termination. Further, it stands admitted that the services of the petitioner and 1697 other Workmen were terminated on 09.02.2004 and they were paid the retrenchment compensation. The petitioner and the other workmen were retrenched after adopting all the codal formalities. Thereafter, as per the orders of the Government, the workmen were reinstated. The petitioner did not join his duties. No person junior to the petitioner has been retained in service or re-engaged. It has been admitted that 1087 workmen were retrenched on 07.07.2005. Those workmen challenged the retrenchment orders and have been retained in service as per the orders of the Court. Since the petitioner failed to join his duties as per the orders of the Government, the question of retaining the persons junior to him in service or violating the provisions of the Act does not arise. The petitioner never approached him (respondent) for reinstatement. The fact that the petitioner is not gainfully employed from the date of his retrenchment has been denied for want of knowledge. The petition is devoid of any merit. In these circumstances the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 29.8.2011, below given issues were struck by my Id. Predecessor:
  1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?  
..OPP
  2. Whether the termination of the petitioner is also violative of the provisions under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?  
..OPP
  3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?  
..OPR
  4. Whether the reference is not maintainable as alleged. If so, to what effect?  
..OPR
  5. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Yes  
 Issue No.3 : No  
 Issue No.4 : Not pressed.  
 Relief. : Reference/petition allowed vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Sh. Jiwan Lal stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the seniority list/year-wise mandays chart Ex. PW1/B in respect of the workman namely Sh. Shashi Kant s/o Shri Bihari Lal who was junior to him and retained in service by the respondent at the time of the termination of his (petitioner's) services. Further, he proved Ex. PW1/C i.e. the seniority list of daily waged beldar in respect of the respondent who had completed 8 years of service upto 31.3.2008. In the cross-examination, he admitted that he had joined as daily waged beldar in 1998 and worked as such upto February, 2004. He also admitted that the respondent/department had terminated his services by giving him a notice and paying three months salary as retrenchment compensation. He admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of the new Division, the labour became surplus. He even denied that no person junior to him was retained in service by the respondent at the time of his retrenchment. He denied that he did not rejoin the service willingly at the relevant time. He controverted that he is gainfully employed as an

agriculturist. He denied that the instant industrial dispute was raised by him at a belated stage and he is not entitled to any relief.

10. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also placed on the record Ex. RW1/A i.e. the mandays chart relating to the petitioner. He continued to state that the services of the petitioner were terminated being surplus and due to shortage of the funds. Before terminating the services of the petitioner, the then Executive Engineer, HPPWD, Dharampur had sought the permission from the specified authority namely the then Chief Engineer, HPPWD, Central Zone, Mandi. The specified authority after affording an opportunity of being heard to the petitioner granted the permission to terminate his services. After that, the services of the petitioner were disengaged by giving him a notice Ex. RW1/B and paying the retrenchment compensation as per Section 25-F of the Act. Thereafter as per memorandum of settlement dated 29.3.2004 (Ex. RW1/C) executed between him (respondent) and the representatives of the workers, it was agreed that all the retrenched workmen numbering 1858 of different categories including the petitioner will be re-engaged upto 16.4.2004. The retrenched workers were also supposed to give their joining upto 30.4.2004. The petitioner failed to resume his duties as per the memorandum of settlement Ex. RW1/C. For this reason, he could not be re-engaged. The present dispute has been raked up by the petitioner at a belated stage in the year 2008. He is working as an agriculturist and earns his livelihood by doing the work of agriculture. As the petitioner failed to join the service as per the terms and conditions of the memorandum of settlement, he is not entitled to any benefit. In the cross-examination, he admitted that the petitioner worked for more than 240 days during the period of 12 calendar months preceding the date of his termination. He denied that the persons junior to the petitioner were retained in service at the time of the termination of the services of the petitioner. He admitted that the seniority list Ex. PW1/B was issued by the office. He also admitted that one Smt. Mamta Devi w/o Sh. Hans Raj was engaged as daily waged beldar and her services were terminated w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-employed on compassionate grounds as her husband Sh. Hans Raj died while serving the HPPWD. He refuted that Smt. Mamta Devi was junior to the petitioner. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Sh. Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that the memorandum of settlement was neither to the knowledge of the petitioner nor he (petitioner) had authorized any person to sign it on his behalf. He admitted that no notice to rejoin as on 30.4.2004 and thereafter was issued to the petitioner. Further, he admitted that no inquiry was conducted against the petitioner and a notice of one month was not given to him.

11. It is the admitted case of the respondent that the services of the petitioner were engaged as daily waged beldar w.e.f. December, 1998 and he worked as such continuously upto 08.02.2004. It is also the admitted case of the respondent that the petitioner had completed 240 days of work in each calendar year of his service as well as the block of last 12 calendar months preceding the date of his termination i.e. 09.02.2004. The respondent in his reply nowhere pleaded that the services of the petitioner and other workmen were dispensed with after seeking permission from the specified authority viz Chief Engineer, HPPWD, Central Zone, Mandi. Therefore, the evidence of the respondent to that effect being beyond his pleadings cannot be read. Otherwise too, it is an admitted fact that the retrenchment orders passed by the respondent by taking recourse to the provisions of Section 25-N of the Act have already been set aside by this Court and affirmed by the Hon'ble High Court of Himachal Pradesh.

12. It is an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 09.02.2004. The contention of the respondent is that before the termination of the services of the petitioner a notice (the copy of which is Ex. RW1/B) was given to him. The

petitioner was also paid the retrenchment compensation. Perusal of Ex. RW1/B goes to show that per this notice dated 23.01.2004 the services of the petitioner were terminated w.e.f. 09.02.2004.

13. Section 25-F of the Act reads thus:

“25-F. **Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. Bare perusal of the notice (Ex. RW1/B) goes to show that it does not comply with the requirements of Section 25-F of the Act. Moreover, the respondent (RW1) in his cross-examination admitted that neither one month's notice was served upon the petitioner nor any inquiry was conducted against him before the termination of his services.

15. From the oral and documentary evidence placed on the record it becomes clear that the petitioner had completed 240 days of continuous service in a period of 12 calendar months preceding the date of his retrenchment. Not only this, the persons junior to the petitioner have been retained in service by the respondent. There is nothing on the file to show that before engaging the new/fresh hands an opportunity of re-employment was given to the petitioner. The principle of 'last come first go' has not been followed by the respondent. His act is violative of Sections 25-G and 25-H of the Act.

16. Coming to the assertion of the respondent that the petitioner failed to join his duties as per the memorandum of settlement dated 29.3.2004 the copy of which is Ex. RW1/C, I will like to say that there is nothing on the file to show that the petitioner was a party to the memorandum of settlement or had authorized someone to sign the same on his behalf. There is not even an iota of evidence on the record to show that the memorandum of settlement was to the knowledge of the petitioner. It is the admitted case of the respondent that no notice was sent to the petitioner on 30.4.2004 and, thereafter, calling upon him to resume his duties as per the memorandum of settlement allegedly arrived at between the parties.

17. It is an admitted fact that thousands of workmen were retrenched by the respondent w.e.f. 09.02.2004 to 08.07.2005. The retrenchment orders relating to a number of workmen have already been set aside by this Court. Pursuant to the Awards passed by this Court as affirmed by the Hon'ble High Court of Himachal Pradesh, a number of workmen have been re-employed and paid a lump sum amount of Rs.50,000/- in lieu of back wages, litigation expenses and compensation. To avoid discrimination amongst the workmen, I feel that the petitioner is also entitled to a sum of Rs.50,000/- on account of back wages and compensation etc. His retrenchment is bad in the eyes of law.

18. These issues are decided in favour of the petitioner and against the respondent.

### ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. For entitlement to back wages on reinstatement of an employee, the initial burden lies upon him to show that he was not gainfully employed. Only thereafter, the employer is required to rebut the same. The bald statement made by the petitioner (PW1) to the effect that from the date of his termination upto now he is unemployed cannot be taken as a gospel truth. The petitioner must be doing some work of agriculture etc. to make both the ends meet.

21A. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO.4

22. Not pressed.

### RELIEF (ISSUE NO.5)

23. As a sequel to my findings on the above issues, the instant reference/claim petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity in service and seniority from the date of his illegal termination. The petitioner is also held entitled to a lump sum amount of Rs.50,000/- in lieu of back wages and compensation etc. The respondent is directed to regularize the services of the petitioner as per the policies framed by the State Government from time to time. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of April, 2012.

By order,  
**RAJAN GUPTA,**  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 56/2011**

**Date of Institution : 18.05.2011**

**Date of Decision : 09.04.2012**

Shri Manoj Kumar s/o Shri Amar Singh, r/o Village Ranger, P.O. Seoh, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :	Sh. N.L. Kaundal, AR
	Sh. Vijay Kaundal, Adv.
For the Respondent :	Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Manoj Kumar s/o Shri Amar Singh, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005, vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. April, 1999 as a daily wagger on the muster rolls. He worked as such continuously upto 07/07/2005 without any break. On 8th July, 2005, he was retrenched by the respondent after giving three months' notice and paying the retrenchment compensation as per Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He (petitioner) had completed more than 240 days of service in each calendar year from 1999 to 08/7/2005 as well as in 12 calendar months preceding the date of his retrenchment. Before the termination of his services, the seniority list of daily wagers working under the respondent was not given to him (petitioner). He has not signed any seniority list before his retrenchment. 35 persons junior to him namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been appointed by the respondent as daily waged beldar in the month of November, 1998. Sh. Shashi Kant was appointed in the year 2000. His services have not been disengaged along with him (petitioner) and the above named workmen have been retained in service by the respondent. The principle of 'last come first go' has not been adhered to by the respondent. One Smt. Mamta Devi w/o late Sh. Hans Raj, r/o Village Gehra, P.O. Saklana, Tehsil Sarkaghat was appointed by the respondent in the year 2000. She too was junior to him (petitioner). Her services were dispensed with by the respondent w.e.f. 08.7.2005 along with him (petitioner). Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. He (petitioner) has not been given any opportunity of re-employment as per the Rules. In the month of September,

2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-appointment the principle of 'last come first go' has not been followed. The juniors have been re-engaged without giving an offer of employment to the seniors. The respondent has failed to comply with the provisions of Sections 25-G and 25-H of the Act. The illegal retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court. The Awards of this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-engaged more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is entitled to reinstatement, seniority, continuity in service and compensation. After the termination of his services, he is unemployed. He is entitled to back wages as well. As such, as is apparent from the prayer clause of the petition/statement of claim the petitioner has claimed the following relief(s) in this petition:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and again directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs. 5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the petition suffers from the vice of delay and laches. The petitioner has not come to this Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct. The reference is not maintainable as another efficacious remedy is available to the petitioner at the first instance. On merits, it has been owned that the services of the petitioner were engaged on muster rolls as a daily wager w.e.f. April, 1999 and he worked continuously upto 07.07.2005 without any break. It stands admitted that the petitioner was retrenched from service w.e.f. 08.07.2005 after giving him three months' notice and retrenchment compensation as per Section 25-N of the Act. Further, it has been admitted that the petitioner had completed 240 days of continuous service in 12 calendar months preceding the date of his retrenchment. However, it has been pleaded that some junior daily waged workers are serving the respondent/department because of the non availability of seniors. The juniors have been transferred from other Division/Sub Division. Retrenchment notices have also been served upon the juniors being surplus to the requirement. It has been admitted that the services of Smt. Mamta Devi w/o late Sh. Hans Raj were disengaged along with the petitioner. Smt. Mamta Devi has been re-engaged on compassionate grounds as her husband (Sh. Hans Raj) died in an accident. The facts that the other retrenched workmen have been reinstated as per the decision of this Court and the Hon'ble High Court of Himachal Pradesh as well as paid the compensation stand admitted. It has been disputed that the petitioner is not gainfully employed after the termination of his services. The petition is devoid of any merit. In these circumstances the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 11.10.2011, below given issues were struck by my Id. Predecessor:
  1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?  
..OPP
  2. Whether the termination of the petitioner is also violative of the provisions under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?  
..OPP
  3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?  
..OPR
  4. Whether the reference is not maintainable as alleged. If so, to what effect?  
..OPR
  5. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Yes  
 Issue No.3 : Not pressed.  
 Issue No.4 : Not pressed.  
 Relief. : Reference allowed vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. Sh. Manoj Kumar (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the seniority list/year-wise man days chart in respect of Sh. Shashi Kant s/o Sh. Bihari Lal who was junior to him (petitioner) and retained in service by the respondent at the time of the termination of the services of the petitioner. In the cross-examination, he admitted that the department terminated his services by giving a notice and paying three months' salary as retrenchment compensation. He also admitted that at the time of receiving the compensation he did not raise any objection/protest. He denied that the notice of retrenchment was issued by the Chief Engineer, Central Zone, HPPWD, Mandi. Volunteered, such notice was issued by the Executive Engineer, HPPWD, Dharampur (respondent). He does not know that the Chief Engineers of all the three Zones i.e. South Zone, Shimla, Central Zone, Mandi and North Zone, Dharamshala were delegated powers of the specified authority for the smooth functioning of the department and to avoid financial hardship to the workers in case any dispute arises under the Act. He is not aware of the fact that the termination orders were passed in accordance with the directions of the Chief Engineer. He admitted that the Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of HPPWD Division, Dharampur, the labour thereof became surplus. He admitted that as many as

1087 other workers were removed from service at the time of his retrenchment. He refuted that no worker junior to him has been retained in service by the respondent. He admitted that he had instituted the case before the Hon'ble High Court of Himachal Pradesh but did not get any relief from there. He controverted that his services were terminated as per law.

10. To the contrary, Sh. Prakash Chand, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. He also stated that the services of the petitioner were dispensed with in accordance with law being surplus. The then Executive Engineer, HPPWD Division, Dharampur had sought the permission for retrenchment of the petitioner and some other workers from the specified authority namely the then Chief Engineer, HPPWD, Central Zone, Mandi. The specified authority after affording an opportunity of being heard to the petitioner gave the permission to terminate his services. Only thereafter, the services of the petitioner were dispensed with by giving him three months' notice and paying the retrenchment compensation as envisaged under Section 25-N of the Act. Ex. RW1/A1 is the order passed by the specified authority. Ex. RW1/A2 is the seniority list of daily waged beldars in respect of Dharampur Division. Ex. RW1/A4 is the copy of the termination notice which was served upon the petitioner under Section 25-N of the Act. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the 12 calendar months preceding the date of termination of his services. The seniority list/year-wise man days chart in respect of the workman namely Sh. Shasi Kant was issued by him (RW1). Its true copy is Ex. PW1/B. He admitted that Smt. Mamta Devi w/o late Sh. Hans Raj was engaged as daily waged beldar in HPPWD Division Dharampur. Her services were terminated w.e.f. 08.7.2005. Ex. RW1/A3 is the copy of the termination notice served upon Smt. Mamta Devi, she was re-engaged as daily waged beldar in the year 2008. Self stated that she was re-employed on compassionate grounds as her husband Sh. Hans Raj died while serving the department. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging Smt. Mamta Devi as a daily wager no opportunity of re-employment was given to the petitioner. He (RW1) cannot say that Sh. Hans Raj, husband of Smt. Mamta Devi, breathed his last in the year 1999. He denied that at the time of termination of the services of the petitioner the work and funds were available.

11. It is the admitted case of the respondent that the petitioner was appointed as a daily wager in the month of April, 1999 and he worked continuously as such upto 07/07/2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services.

12. The respondent in his reply has nowhere pleaded that the services of the petitioner were dispensed with by taking recourse to the provisions of Section 25-N of the Act. Therefore, the evidence of the respondent to that effect being beyond his pleadings cannot be read. Otherwise too, it is an admitted fact that the retrenchment of the other workmen by the respondent under Section 25-N of the Act has been held to be illegal by my Id. Predecessor while deciding the references relating to the similarly situated workmen.

13. From the oral and documentary evidence available on the file, it becomes clear that the persons junior to the petitioner are still serving the respondent/department. He was not given an opportunity of re-employment. The principle of 'last come first go' has not been followed by the respondent. Therefore, the act of the respondent is violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

14. Not only this, it is an admitted fact that many other workmen have been re-engaged by the respondent as per the orders passed by this Court and the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while dealing with the similar matters arising out of the Awards

passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi District vide CWP No.1367/2010 and other connected matters decided on 13.5.2010 has held that the workmen are entitled to a lump sum amount of Rs.50,000/- each in lieu of back wages, litigation expenses and compensation. In view of the aforesaid circumstances and to avoid discrimination amongst the workmen, the petitioner shall be entitled to a sum of Rs.50,000/- lump sum in lieu of back wages, litigation expenses and compensation. His (petitioner's) retrenchment is bad in the eyes of law.

15. These issues are decided in favour of the petitioner and against the respondent.

### **ISSUES NO. 3 and 4**

16. Not pressed.

### **RELIEF (ISSUE NO.5)**

17. Taking into consideration my findings on the aforesaid issues, the instant petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. He shall be entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment i.e. July 8, 2005. The respondent is directed to reengage the petitioner forthwith. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 09th day of April, 2012.

By order,  
**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**(CAMP AT UNA)**

**Ref No. : 31/2010**

**Date of Institution : 23.04.2010**

**Date of Decision : 23.03.2012**

Shri Param Dev s/o Shri Ghunger Ram, r/o Village Suckswal, P.O. Samrahan, Tehsil Kotli, District Mandi, H.P.

...Petitioner

Versus

1. The Settlement Officer, Kangra Division, Dharamshala, District Kangra, H.P.

2. Naib Tehsildar (Settlement), Circle Baragan, Kullu, District Kullu, H.P.

...Respondents

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Khidta, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Param Devi s/o Shri Ghunger Ram by the (1) Settlement Officer, Kangra Division, Dharamshala, District Kangra, H.P. (2) Naib Tehsildar (Settlement), Circle Baragan, Kullu, District Kullu, H.P. w.e.f.31.07.03 without serving him charge sheet, without holding enquiry and without complying with the provisions of The Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was engaged as Chain Man in the office of Settlement Officer, Dharamshala on 11.2.1997 for 89 days. He worked continuously in the said office for one year. Thereafter he was transferred to the office of Naib Tehsildar (Settlement), Rangus, District Hamirpur. He remained posted at Rangus for 2 ½ years. After that he (petitioner) was transferred to the office of Naib Tehsildar (Settlement) Raisan, District Kullu. He worked continuously as such upto 31.7.2003. During the period of his employment, the respondents used to give him fictional breaks which amounts to ‘unfair labour practice’. A notice dated 21.7.2003 was received by him indicating that his (petitioner’s) services shall stand terminated w.e.f. 31.7.2003. His services were dispensed with without assigning any reason and without complying with the provisions of the Industrial Disputes Act, 1947 (‘the Act’ for short). He was forced to approach the Hon’ble H.P. State Administrative Tribunal, Shimla for the redressal of his grievances. He instituted Original Application No.2092/2003 before the Hon’ble Tribunal. Due to the closure of the Hon’ble Tribunal, the Original Application preferred by him was transferred to the Hon’ble High Court. He (petitioner) withdrew the case/Original Application from the Hon’ble High Court with liberty to avail alternate remedy. After the withdrawal of the case, he approached the respondents/department a number of times to re-engage him, but in vain. Then he served a demand notice upon the respondents. The copy of the demand notice was also forwarded to the Labour-cum-Conciliation Officer, Kullu. The latter called the respondents. The matter could not be reconciled because of the adamant attitude of the respondents. No retrenchment compensation was paid to him. His (petitioner’s) work and conduct always remained upto the satisfaction of the officials of the respondents. He had completed 240 days of service in each calendar year preceding the date of his termination. The services of the other workmen engaged by the respondents/department have already been regularized. He has a right to continue in service till he attains the age of superannuation. The work which he (petitioner) was performing is still available with the department. The workers are required by the respondents/department. The act and conduct of the respondents is highly illegal, unjust and arbitrary. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Act. As such, he (petitioner) prays that the respondents be directed to reinstate him with full back wages and other consequential benefits including the continuity and seniority in service. He also prays that his services be regularized as per the policy of the State Government by setting aside the termination.

3. On notice, the respondents appeared. They filed common reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable against them. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner. They (respondents) by undertaking the settlement operation were performing the sovereign function of the State. Therefore, they do not fall under the definition of the industry. This Court/Tribunal has no jurisdiction to entertain and try the petition. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. On merits, it stands admitted that the petitioner was employed as Chain Man in the office of Settlement Officer, Kangra at Dharamshala on 11.02.1997. It has been owned that the petitioner was transferred from one place to the other from time to time. The man days chart of the petitioner is appended as annexure R-I to the reply. The copy of the Office Order with respect to the appointment of the petitioner is attached as annexure R-II to the reply. The State Government by taking recourse to the provisions of the H.P. Land Revenue Act, 1954 carries out sovereign function of surveys/settlement of land holding by undertaking the Settlement Operations under the overall supervision of the Settlement Officer (respondent No.1) Per Notification dated 9th February, 1995 issued by the State Government, the area falling within the territorial jurisdiction of District Kullu came under the Settlement Operation. Copy of such Notification is annexed as annexure R-III to the reply. For carrying out the Settlement Operation, the respondent No.1 employed Chain Man as per law in a phased manner. On 03.04.2003, as many as 64 daily paid Chain Men were employed. Their composite seniority list is attached as annexure R-V to the reply. With the conclusion of the work of settlement, the need of work force also diminished. Due to the non-availability of the work, funds and sanction, it was difficult for them (respondents) and the State to carry on with the services of all the Chain Men. Accordingly, the State of H.P. vide letter dated 26.8.2002 accorded the sanction/approval for the posts of 116 casual Patwaris and 50 daily waged Chain Men. In view of the sanction, the respondent No.1 by applying the principle of 'last come first go' terminated the services of the Chain Men figuring at serial No. 51 to 64 of the seniority list (annexure RV). A notice dated 21.7.2003 (annexure RVI) was duly given to the petitioner informing him that his services shall stand dispensed with w.e.f. 31.7.2003. The petitioner and the similarly situated persons are not entitled to any protection under the Act or continuity in service. The Settlement Operation is not of permanent nature. It has been owned that the petitioner had instituted the Original Application before the Hon'ble Tribunal. The said Original Application was withdrawn by the petitioner from the Hon'ble High Court of his own accord and free will. The instant industrial dispute has been raised by the petitioner at a belated stage per demand notice dated 01.3.2009. The petitioner has been retrenched from service being surplus. No provision of the Act has been flouted. The disengagement of the petitioner is legal and valid. He is not entitled to any relief. The petitioner is gainfully employed as an agriculturist after his termination. In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondents. It has been stated that the work under the respondents is of permanent nature. For the said reason the services of the persons senior to him have already been regularized. There is/was no surplus as alleged. The work is still available with the respondents/department.

5. Vide order dated 05.7.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 31.7.2003 is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the reference is not maintainable as the respondent is allegedly performing sovereign function, if so, to what effect?  
..OPR
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No  
 Issue No.2 : No  
 Relief. : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. The petitioner Sh. Param Dev stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that he used to do manual work. The information given by the respondents with respect to the availability of work pertaining to the settlement is Ex. PW1/B. In the cross-examination, he denied that at the time of his engagement, he and the other Chain Men were informed by the respondents that the work is of temporary nature and on its completion their services will be terminated. The persons junior to him (PW1) namely S/Sh. Durga Dass and Mohinder are still serving the department. He also denied that his services were validly terminated after giving the notice. He denied that he raised the industrial dispute at a belated stage. He is making both the ends meet by doing the work of agriculture.

9. Conversely, Sh. Vikas Labroo, Settlement Officer, Kangra Division at Dharamshala (respondent No.1) appeared as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He also placed on the record various documents viz Exhibits RW1/B to G. In the cross-examination he admitted that the petitioner served the department regularly w.e.f. 11.2.1997 to 31.7.2003. He also admitted that as per the record, the petitioner completed 240 days of service prior to 31.7.2003 i.e. the date of his retrenchment. No notice except Ex. RW1/C was given to the petitioner before disengaging his services. No retrenchment compensation was paid to the petitioner. He (RW1) admitted that in different areas, the Settlement Operation is still in progress. He admitted that the settlement is going on in the villages detailed in the list/information Ex. X1. Further, he admitted that the services of some of the persons junior to the petitioner have already been regularized by the department. Self stated, the juniors have been re-engaged as per the directions of the Hon'ble High Court of H.P. He admitted that the petitioner had raised the industrial dispute before the Hon'ble Administrative Tribunal for the first time in the year 2002. He refuted that the petitioner was retrenched wrongly and illegally.

10. Ex. RW1/B is the man days chart relating to the petitioner.

11. Ex. RW1/C is the copy of the Office Order vide which the services of the petitioner and others were engaged as daily waged Chain Men.

12. Ex. RW1/D is the copy of the Notification dated 09th February, 1995 issued by the Department of Revenue of the Government of H.P. It depicts that the Settlement Operation was ordered to be conducted in District Kullu.

13. Ex. RW1/E is the list showing the particulars of daily waged Chain Men as on 31.3.2003 in the Settlement Office, Kangra Division at Dharamshala. The name of the petitioner finds mention in this list at serial No.55.

14. Ex. RW1/F is the copy of the notice dated 21st July, 2003 which was served upon the petitioner by the respondent No.1 indicating that his services will stand terminated w.e.f. 31.7.2003 (afternoon).

15. Ex. RW1/G is the copy of the demand notice dated 01.3.2009 served by the petitioner upon the respondents under Section 2-A of the Act.

16. Ex. X1 is the information supplied by the respondent No.1 with respect to the continuity of Settlement Operation in different areas. It corresponds to Ex. PW1/B.

17. It is the admitted case of the respondents that the services of the petitioner were engaged as daily waged Chain Man w.e.f. 11.2.1997 and he worked as such upto 31.7.2003 (afternoon). It is not the case of the respondents that the petitioner abandoned the job on his own. Rather, their version is that the services of the petitioner were terminated w.e.f. 31.7.2003 (afternoon) after serving the notice dated 21.7.2003 upon him. Copy of the said notice is Ex. RW1/F.

18. From the statement made by Sh. Vikas Labroo (RW1) coupled with the documents Exhibits PW1/B and X1 placed on the file it becomes clear that the Settlement Operation is still going on in different villages of Districts Hamirpur, Kullu and Una. Therefore, it cannot be said that the respondents have no work to continue with the services of the petitioner as he had become surplus due to the completion of Settlement Operation/work.

19. The testimony made by RW1 and the man days chart Ex. RW1/B go to show that the petitioner had completed 240 days of continuous service in a block of 12 calendar months preceding the date of his retrenchment i.e. 31.7.2003. It is not the version of the respondents that the petitioner/workman was given one month's notice in writing indicating the reasons for retrenchment. Rather, notice dated 21.7.2003, the copy of which is Ex. RW1/F, was given to the petitioner by the respondent No.1 indicating that his services shall stand terminated w.e.f. 31.7.2003 (afternoon) i.e. just after 10 days from the date of the issuance of the notice. Admittedly, no retrenchment compensation was paid to the petitioner. Therefore, it can be safely said that the respondents have failed to comply with the mandate of Section 25-F of the Act.

20. It has come in the statement of Sh. Vikas Labroo (RW1) that the persons junior to the petitioner have been regularized by the department. It is also there in the deposition of RW1 that the Settlement Operation is continuing in different areas. There is not even an iota of evidence on the record to show that an opportunity of re-employment was given to the petitioner after his retrenchment. The principle of 'last come first go' has not been adhered to by the respondents. Their action is, thus, also in derogation of Sections 25-G and 25-H of the Act.

21. So far as Section 25-N of the Act is concerned, I feel that the provisions of the said Section are not attracted in the present case.

22. This issue has been answered accordingly.

**ISSUE NO. 2**

23. Taking into consideration the observations made by our Hon'ble High Court in Civil Writ Petition (T) No.9554/2008 titled as Mohinder Singh vs. State of H.P. & anr. decided on 26.4.2010 as well as Civil Writ Petition (T) No.9552/2008 titled as Durga Dass vs. State of H.P. and another decided on 29.4.2010, it can be easily said that the provisions of the Act are applicable to the instant case. The petition is maintainable in the present form.

24. This issue is decided in favour of the petitioner and against the respondents.

**RELIEF (ISSUE NO.3)**

25. As a sequel to my findings on the aforesaid issues, the reference in hand is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to continuity and seniority in service except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2012.

By order,  
**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 19/2010**

**Date of Institution : 26.02.2010**

**Date of Decision : 12.03.2012**

Shri Rakesh Kumar s/o Shri Kashmiri Lal, r/o Village Dangera, P.O. Rainseri, Tehsil & District Una, H.P.

...Petitioner

Versus

Executive Engineer, Flood Protection Division, Gagret, Tehsil Amb, District Una, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR  
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rakesh Kumar s/o Shri Kashmiri Lal by Executive Engineer, Flood Protection Division, Gagret, Tehsil Amb, District Una, H.P. w.e.f. 01.12.1999 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him are retained by the above employer, is proper and justified? If not, what relief of back wages, seniority and past service benefits the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he joined the respondent department as daily waged beldar on 1st June, 1998. He worked as such upto 30.09.1998. Initially he worked in the office of Executive Engineer, Irrigation and Public Health Department Tubewell Division from 01.06.1998 to 30.09.1998. From 01.09.1998 to 30.11.1999, he worked under the respondent and completed more than 240 days of service. Both the employers under whom he (petitioner) worked are posted in the same circle of the department. The respondent showed before the Conciliation Officer, Una that he (petitioner) has worked only for 234 days (instead of 240 days) which amounts to ‘unfair labour practice’. His (petitioner’s) services were terminated by a verbal order on 01.12.1999. His name was not mentioned in the muster roll issued for the month of December, 1999. Neither any show cause notice was given to him nor he was informed about his misconduct. The respondent has employed as many as 17 workmen/fresh hands junior to him (petitioner) after his termination. Their details are as under:-

Year	No. of newly appointed workmen	Names of newly appointed or Junior workmen
2000	03	Smt. Sagri Devi Sh. Jasmer Singh Sh. Tilak Raj.
2001	06	Sh. Shiv Kumar Sh. Ashwani Kumar Sh. Rajinder Kumar Sh. Ravinder Kumar Sh. Raj Kumar Sh. Sunil Kumar.
2002	08	Sh. Om Prakash Sh. Rampal Sh. Raj Kumar Sh. Binod Kumar Sh. Suresh Kumar Sh. Sanjeev Kumar Sh. Satish Kumar and Sh. Mahesh Kumar

He (petitioner) requested the respondent time and again to reinstate him in service, but in vain. The principle of ‘last come first go’ has not been followed by the respondent. He (petitioner) preferred O.A. No.560/2000 before the Hon’ble H.P. State Administrative Tribunal for his re-engagement. The said O.A. (Original Application) was disposed of by the Hon’ble Administrative

Tribunal on 25.11.2005 on the ground that it has no jurisdiction to deal with the same. He (petitioner) is unemployed till date. The act and conduct of the respondent is illegal and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, he (petitioner) prays that the respondent be directed to reinstate him with all consequential benefits including the continuity and seniority in service as well as the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable against him. The same is bad on account of delay and laches. The petitioner is estopped from raising the industrial dispute by his act and conduct.

On merits, it has been denied that the petitioner was employed as a daily waged beldar on 01.06.1998 and he firstly served under the Executive Engineer, Irrigation and Public Health Department, Tubewell Division Gagret. However, it has been pleaded that the petitioner was engaged for the first time by him (respondent) per muster roll No.127 dated 09/1998. The petitioner never completed 240 days of continuous service in any year his services were engaged. The copy of the man days chart of the petitioner is attached as annexure-I to the reply. No wrong record was placed for consideration before the Labour-cum-Conciliation Officer, Una. The assertion of the petitioner that he worked w.e.f. 01.06.1998 to 30.11.1999 under the Executive Engineer, Tube well Division, Gagret, Tehsil Amb, District Una is wrong. As per the information supplied by the Executive Engineer, Tube well Division Gagret the services of the petitioner were never engaged by him. The petitioner was never terminated as alleged. He (petitioner) voluntarily abandoned the job w.e.f. 30.11.1999 and did not report for work thereafter. The petitioner has taken the profession of agriculture to earn the livelihood. It has been owned that 17 new workmen/fresh hands were engaged by him (respondent). The engagement of the new workmen in no way affects the case of the petitioner as he left the job of his own accord and free volition to take alternative employment. His (respondent's) office deals with regular development activities for which the workmen are required. The services are engaged as per the availability of the funds and the work at the relevant time. The petitioner cannot claim parity with the workmen who are on his (respondent's) rolls as he (petitioner) abandoned the job. It stands admitted that the Original Application of the petitioner was rejected by the Hon'ble H.P. State Administrative Tribunal. The principle of 'last come first go' was adhered to. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondent. It has been maintained that he was given fictional breaks by the respondent from time to time wrongly and illegally.

5. Per order dated 08.10.2010, below given issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.12.1999 is in violation of the provisions of the Industrial Disputes Act as alleged. If so, to what effect. . .OPP
2. Whether the petition is not maintainable as alleged. If so its effect. . .OPR
3. Whether the petition is hit by vice of delay and laches. If so its effect. . .OPR

## 4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No  
 Issue No.2 : Not Pressed  
 Issue No.3 : No  
 Relief. : Reference allowed in part vide operative part of the Award.

**REASONS FOR FINDINGS****ISSUE NO.1**

8. The petitioner Shri Rakesh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the statement of claim in its entirety. He also stated that he was given the fictional breaks from time to time by the respondent which amounts to 'unfair labour practice'. He placed on the record various documents viz Marks A to E. In the cross-examination he admitted that he joined the service in the respondent department in the month of September, 1998. He denied that he did not remain posted in the Tube well Division from 01.06.1998 to 30.09.1998 as alleged. He refuted that on 30.11.1999 he left the service of his own and, thereafter, started doing the work of agriculture to make both the ends meet. He controverted that he did not complete 240 days of continuous service in any year in which he served the respondent. Further he denied that he is not entitled to re-employment and receive any compensation.

9. To the contrary, Shri N.M. Saini (respondent) appeared as RW1. He corroborated on oath the contents of the reply filed by him. He also placed on the file Ex. RW1/A, the man days chart of the petitioner. Ex. RW1/B is the copy of the letter written by the Executive Engineer Tubewell Division, Gagret to the effect that the petitioner never worked in the said Division from 01.06.1998 to 30.09.1998 as claimed. Ex. RW1/C is the detail showing year-wise engagement of daily waged workers after the year 1999 by the respondent. He (RW1) also deposed that the petitioner is gainfully employed as an agriculturist. In the cross-examination, he admitted that the petitioner had earlier approached the Hon'ble Administrative Tribunal for redressal of his grievances. He (RW1) even admitted that 17 new workmen have been employed by the department from the year 2000 onwards. He admitted that no opportunity of re-employment was given to the petitioner before engaging the fresh hands/workmen. He denied that he is not speaking the truth.

10. Mark-A is the copy of the information supplied by Public Information Officer-cum-Executive Engineer, I&PH Division No.1 Una relating to the working days/man days chart of the petitioner from 02.06.1998 to 31.08.1998.

11. Mark-B is also the copy of the man days chart of the petitioner. It corresponds to Ex. RW1/A.

12. Mark-C is the detail of the workmen employed by the respondent after the year 1999. It corresponds to Ex. RW1/C.

13. Mark-D is the copy of the order dated 25.11.2005 passed by the Hon'ble H.P. State Administrative Tribunal in O.A. No. 560/2000 titled as Rakesh Kumar vs. State of H.P. & Anr.

14. Mark-E is the copy of the demand notice dated 13.07.2008 served by the petitioner upon the respondent under Section 2-A of the Act.

15. The petitioner has not produced any record evidencing that from 01.06.1998 to 30.09.1998 his services were engaged by the Executive Engineer, Tube well Division, Gagret. It is the admitted case of the respondent that the petitioner was engaged vide muster roll No.127 issued in the month of September, 1998 and he worked upto 30.11.1999. The version of the respondent is that the petitioner abandoned the job of his own accord and free will. It is common knowledge that the abandonment has to be proved by the respondent like any other fact. There is nothing on the record to show that the respondent had sent a notice to the petitioner calling upon him to resume his duties. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. The plea of abandonment put forth by the respondent is not established.

16. Now comes the question as to whether the termination/retrenchment of the services of the petitioner by the respondent is in derogation of Sections 25-F, 25-G and 25-H of the Act or not?

17. From the man days charts Marks-A, B and Ex. RW1/A, it becomes clear that the petitioner had not completed 240 days of service in a block of 12 calendar months preceding his date of retrenchment i.e. 01.12.1999. Therefore, it cannot be said that the petitioner was in 'continuous service for not less than one year' under the employer anterior to his retrenchment. As such, it can be safely said that the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

18. It has already been concluded by me that the services of the petitioner were disengaged by the respondent w.e.f. 01.12.1999. The respondent in his reply has admitted that after the retrenchment of the petitioner, 17 new/fresh hands have been engaged by him whose names figure in Ex. RW1/C. RW1 admitted that no opportunity of re-employment was given to the petitioner before engaging new workmen. It is an admitted fact that the persons junior to the petitioner are serving the respondent department. That being so, it can be safely said that the principle of 'last come first go' has not been followed by the respondent. He (respondent) has failed to comply with the provisions of Sections 25-G and 25-H of the Act.

19. This issue has been answered accordingly.

## ISSUE NO.2

20. Not pressed.

## ISSUE NO.3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. This issue is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO.4)**

24. As a sequel to my findings on the aforesaid issues, the reference in hand is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity from the date his juniors have been offered appointment by the respondent except back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of March, 2012.

By order,  
**RAJAN GUPTA,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 436/2009**

**Date of Institution : 28.08.2009**

**Date of Decision : 12.03.2012**

Shri Ram Swaroop s/o Shri Bhagat Ram, r/o Village & P.O. Chokath, Tehsil Dehra, Distt. Kangra,  
H.P. ...Petitioner

Versus

The Executive Engineer, I&PH Division, Hamirpur, Distt. Hamirpur, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

#### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ram Swaroop s/o Shri Bhagat Ram by The Executive Engineer, I&PH Division, Hamirpur, Distt. Hamirpur, H.P. w.e.f. 01.8.1997 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was engaged by the respondent as daily waged beldar in Sub Division Nadaun on 01.11.1995. He worked as such intermittently upto 31.07.1997 on the muster roll(s). At the time of his appointment, neither any appointment order was issued nor the terms and conditions of service were settled. His (petitioner's) services were suddenly terminated by the respondent/department w.e.f. 01.08.1997. No notice was given to him. He was neither charge sheeted nor an inquiry was conducted. The retrenchment compensation was also not paid to him. He had completed more than 240 days of service in the year 1996 and the last 12 calendar months preceding the date of his illegal termination. In the month of September, 1997 and, thereafter, in the year 1998, he approached the respondent/department to re-engage him but of no avail. He then filed O.A. No.3/1999 before the Hon'ble H.P. State Administrative Tribunal at Shimla. Such O.A. has been disposed of by the Ld. Tribunal for want of jurisdiction. After the disposal of the O.A. by the Hon'ble Tribunal, he (petitioner) sent a demand notice dated 10.05.2007 to the respondent with the request to reengage his services but without any success. The copy of the demand notice was forwarded by him to the Conciliation Officer, Mandi at Bilaspur. The Conciliation Officer initiated the proceedings but he (petitioner) has not been reinstated upto now. At the time of his termination, the principle of 'last come first go' was not followed by the respondent. The persons junior to him have been retained in service. Not only this, after his (petitioner's) termination, the respondent has appointed new workmen. He was not given any opportunity of re-employment. The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short). He is still unemployed.

As such, as is apparent from the prayer clause, the petitioner has claimed the following relief(s) in this petition:-

- i. The Hon'ble Court may kindly be directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits throughout.
- ii. That the Hon'ble Court again kindly be directed to respondent to pay the 12% interest on back wages to the applicant and also pay the Rs.5000/- as litigation cost in the interest of justice and justice be done.”

3. On notice, the respondent appeared. He submitted detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is time barred. The services of the petitioner were disengaged w.e.f. August, 1997. He raked up the industrial dispute during the month of December, 2006 i.e. after the lapse of nine years. It has caused the fading of the dispute. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. Principal Secretary, I&PH Department and the Collector have not been made parties to the petition as required by law.

On merits, it has been denied that the petitioner was engaged as a daily waged beldar on 01.11.1995. It stands admitted that the petitioner worked intermittently w.e.f. December, 1995 to 31.7.1997 as beldar on daily wages. The man days chart of the petitioner is appended as annexure R-I to the reply. The services of the petitioner were not terminated as alleged. Actually, the petitioner was engaged for a specific period and work i.e. the removal of silt from the tank/source

of water/minor excavation and removal of slips. The petitioner worked casually. On the completion of the work his services were disengaged w.e.f. August, 1997. The petitioner has not worked for 240 days in any calendar year as alleged. It has been owned that the petitioner had approached the Hon'ble Tribunal for the redressal of his grievances. No person junior to the petitioner has been retained in service. Three daily wagers have been appointed on compassionate grounds. Five daily wagers have been transferred from the other Division. The copy of the seniority list of the daily waged workers is attached as annexure R-II to the reply. The principle of 'last come first go' was strictly adhered to. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondent.

5. Per order dated 28.05.2010, below given issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.8.1997 is in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

OPP

2. Whether the respondent had violated the provisions of Section 25-G & 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect thereto?

OPP

3. Whether the claim petition is time barred as alleged. If so, to what effect thereto?

OPR

4. Relief.

5. I have heard the Id. counsel/AR for the parties and have gone through the case file.

6. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not Pressed

Issue No.3 : No

Relief : Reference allowed in part vide operative part of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

7. Sh. Ram Swaroop (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition. He placed on the record various documents viz Exhibits PW1/B to D and Mark-A.

8. In the cross-examination, he admitted that he was employed by the respondent/department in the year 1995 and he worked upto the year 1997. He also admitted that the instant industrial dispute was raised by him in the year 2007. He admitted that from the day of

his retrenchment till date, he earned his livelihood by doing the agricultural work and running a shop. He denied that he was given the work temporarily. He admitted that in the year 1997, he had not completed 240 days of work because of which he is not entitled to any compensation. He refuted that he has instituted a phoney petition to grab the money and employment.

9. Conversely, Sh. S.K. Dhiman (respondent) appeared as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He placed on record the documents Exhibits RW1/B to E.

In the cross-examination, he admitted that the petitioner was employed in Sub Division Nadaun and his services were terminated w.e.f. 1st August, 1997. He also admitted that the petitioner had worked for more than

240 days in the last 12 months anterior to his disengagement. No notice was given to the petitioner prior to his retrenchment. No retrenchment compensation was paid to the petitioner. Letter Mark-A was written to the petitioner. He admitted that new/fresh hands have been engaged after the year 1999. Self stated, some of the persons have been appointed on compassionate grounds and some have come by transfer from the other Divisions.

10. Ex. PW1/B is the copy of the order dated 06.01.1999 passed by the Hon'ble Tribunal in O.A. No.3/1999 titled as Sh. Ram Swaroop & Anr. vs. State of H.P. & Ors. Ex. PW1/C is the copy of the demand notice dated 10.5.2007 sent by the petitioner. Ex. PW1/D is the letter written by the Labour Officer, Dharamshala to the Labour Officer, Bilaspur.

11. Ex. RW1/B is the copy of the demand notice dated 26.12.2006 served upon the respondent by the petitioner.

12. Ex. RW1/C is the copy of the order dated 25.2.2005 passed by the Hon'ble Tribunal in O.A. No.3/1999. Ex. RW1/D is the man days chart relating to the petitioner.

13. Ex. RW1/E is the seniority list of daily wage workers engaged w.e.f. 01.12.1995 upto date by the respondent.

14. It is the admitted case of the respondent that the petitioner worked with him from time to time and his services were disengaged w.e.f. 01.8.1997. The respondent (RW1) in his cross-examination admitted that the petitioner had completed 240 days of service in a block of 12 calendar months anterior to his date of retrenchment i.e. 01.8.1997. The said fact also finds support from the man days chart Ex. RW1/D.

15. Section 25-F of the Act reads thus:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

16. It is not the case of the respondent that the petitioner abandoned the job of his own accord and free volition. There is nothing on the file to suggest that the mandate of Section 25-F of the Act was complied with by the respondent before the retrenchment of the petitioner. Therefore, the action of the respondent is bad in the eyes of law.

17. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO. 2

18. Not pressed.

## ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act.*

*The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

22. In view of the trite laid down in this ruling, it cannot be said that the petition is time barred. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him relief(s) claimed. At the cost of reiteration, I will like to add that the petitioner (PW1) in his cross-examination admitted that during the period he was out of the job, he made both the ends meet by doing the agricultural work and running a shop.

23. This issue is also decided in favour of the petitioner and against the respondent.

## RELIEF (ISSUE NO.4)

24. As a sequel to my findings on the aforesaid issues, the reference in hand is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to continuity and seniority from the date of his disengagement i.e. 01.08.1997 except back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room. Announced in the open Court today this 12th day of March, 2012.

By order,  
**(Rajan Gupta)**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 194/2010**

**Date of Institution : 31.5.2010**

**Date of Decision : 24.04.2012**

Shri Ramesh Chand s/o Shri Dalip Singh, r/o VPO Bilaspur, Tehsil Dehra, Distt. Kangra,  
H.P. ...Petitioner

Versus

The Chairman/Manager, M/S The Kangra District Whole Sale Co-operative Consumer and  
Marketing Federation Ltd. Dharamshala, Distt. Kangra, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. A.K. Chaudhary, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of the employer i.e. The Chairman/Manager, M/S The Kangra District Whole Sale Co-operative Consumer and Marketing Federation Ltd. Dharamshala, Distt. Kangra, H.P. to not regularize Sh. Ramesh Chand s/o Sh. Dalip Singh as Sales-Man in the regular Pay-Scale of Rs.400-600/- from the date when Sh. Krishan Chand, junior to him was regularized, is proper and justified? If not, what relief of service benefits, compensation and arrear of back wages the above worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was initially appointed as a Conductor by the respondent in the year 1986. He worked continuously as such upto 18.10.1988. Thereafter, he was promoted as a Salesman by the respondent on contract

basis w.e.f. 19.10.1988. In the year 1995, one Shri Krishan Chand was also appointed as a salesman on contract basis by the management of the respondent/federation. Sh. Krishan Chand worked with him (petitioner) in the capacity of a salesman upto the year 1997. His (petitioner's) work and conduct was found satisfactory by the respondent during the period of his service. He did not give an opportunity to the respondent or the management of the federation to lodge any complaint against him. The services of Shri Krishan Chand, who was working with him (petitioner), have been regularized by the respondent/management in the year 1997 in the pay scale of Rs.400-600/- on the post of the salesman. His (petitioner's) services in the regular pay scale have not been regularized by the respondent. The person junior to him namely Sh. Krishan Chand has been regularized by the respondent in violation of the principles of natural justice and the service laws. He (petitioner) is discharging the same duties as are discharged by a salesman working in the regular cadre. He is entitled to equal pay for equal work. He approached the respondent time and again for regularization of his services in the regular pay scale, but in vain. Ultimately, a demand notice dated 14.6.2008 was served upon the respondent by him. The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. He is entitled to regularization of his services in the regular pay scale from the date the services of his junior (Krishan Chand) have been regularized. The act and conduct of the respondent amounts to unfair labour practice within the meaning of the Industrial Disputes Act, 1947, ('the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim the petitioner has claimed the following relief(s) in this petition:

“i. The Hon'ble Court may kindly be directed to respondent to regularize the services of applicant as salesman from the date of his junior has been regularized in the regular pay scale and again directed to him to pay all the arrear from 1997 to onwards on the scale Rs.400-600/- and revised from time to time by the management to its employees with all arrear and consequential services benefits throughout in the interest of justice and justice be done.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections regarding the existence of cause of action and locus standi of the petitioner to sue have been taken. The petitioner has suppressed the material facts from the Court. The petition is not maintainable in the present form and is liable to be dismissed with exemplary costs. This Court/Tribunal has no jurisdiction to entertain and decide the matter. As per service Rule 31 of the Rules of the employees of the Federation (respondent), the petitioner is/was required to approach the Registrar of the Co-operative Societies for the redressal of his grievances. The said remedy has not been exhausted by the petitioner before coming to this Court/Tribunal.

On merits, it has been owned that the petitioner was appointed in the year 1986. However, it has been denied that his services were engaged as a Conductor. Actually, he was appointed as a daily wage Cleaner. He was not promoted as Salesman as claimed. The petitioner was re-designated as a Salesman on contract basis on payment of Rs.1000/- per month on 19.10.1988. At the time of being re-designated as a salesman, the petitioner had submitted a surety bond dated 22.9.1988 to the tune of Rs.10,000/-. Shri Partap Singh Gill stood surety for the petitioner. The work and conduct of the petitioner was unsatisfactory during the entire period of his service i.e. from 1986 to 1997. On 31.3.1990 the petitioner embezzled a sum of Rs.13,566.35 paisa as entered in voucher No.148 dated 31.3.1990. In the subsequent years i.e. on 31.3.1992, 31.3.1993, 31.3.1994, 21.2.1995, 31.3.2004, 14.01.2005, 15.2.2005, 14.10.2005, 03.11.2005 and 20.3.2005 the petitioner embezzled Rs.72,212.09 paisa of the Federation (respondent). Deficiency in stock was found. The petitioner tendered unconditional written apologies dated 5.9.1998, 12.8.2003 and 30.9.2004 with respect to his act and conduct. The service book of the petitioner does not contain good remarks. Since Shri Krishan Chand fulfilled the conditions for regularization of the services,

his services were regularized by the management vide Resolution No.23, dated 27.10.1995. Shri Krishan Chand is/was not junior to the petitioner as claimed. No retrenchment notice under the Act has been sent to the petitioner so far. The petition is false and frivolous.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was re-designated as a salesman on contract basis. No embezzlement was ever made by him. No criminal case has been registered against him during the period of his service. He is entitled to the regularization as per the judgment rendered by the Hon'ble Apex Court in Mool Raj Upadhyaya's case on completion of 10 years of service w.e.f. 01.1.1996 or 01.01.1997.

5. Per order dated 22.11.2010, below given issues were struck by my Id. Predecessor:

1. Whether the action of the respondent in not regularizing the petitioner from the year 1997 when his junior Sh. Krishan Chand had been regularized as Salesman is illegal as alleged. If so, to what relief the petitioner is entitled to?

...OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

...OPR

3. Whether this Court has no jurisdiction to entertain the reference as alleged. If so, to what effect thereto?

...OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Reference/claim petition dismissed vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUE No.1

8. The petitioner Shri Ramesh Chand stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that no inquiry was conducted against him for the alleged misconduct. He was not given any training for the post of Salesman to maintain the cash book, stock register and prepare the bills/vouchers.

In the cross-examination, he admitted that he was initially appointed as a Cleaner on daily basis. Thereafter, he was designated as a Salesman on payment of Rs.1000/- each month as pay. At the time of his appointment as a Salesman, a surety bond, the copy of which is Mark-X (later on

exhibited as Ex.RW1/C), was executed by him in favour of the respondent society/federation. It bears his signatures. He is serving as a Salesman from the year 1988 till date. He denied that financial irregularities were detected during his tenure as a Salesman. He also denied that on 31.3.1990 it was noticed that he has embezzled Rs.13566.35 paisa of the society/federation. Self stated, the said amount was found short. He refuted that from 31.3.1992 to 20.3.2005, deficiency in the stock and embezzlement to the tune of Rs.72212.09 paisa was detected. He admitted that the affidavit dated 11/12.8.2003 Mark-Y (later on exhibited as Ex. RW1/D) was sworn by him in favour of the respondent. Volunteered, such affidavit was got executed from him forcibly. He denied that he used to mostly remain absent and, thereafter, furnish the affidavits to the management of the society that he will not behave in such a fashion in future. He admitted that the affidavits Mark-Z1 (later on exhibited as Ex. RW1/E), Mark -Z2 (later on exhibited as Ex. RW1/E) and Mark-Z3 (later on exhibited as Ex. RW1/F) were given by him to the respondent. He denied that the service record of Sh. Krishan Chand is good. Self stated, the money was recovered from him. He denied that he did not maintain the accounts of the respondent/society properly and has instituted a phoney petition.

9. Conversely, Sh. Braham Kumar Sharma, Manager of the respondent testified as RW1. In his affidavit Ex. RW1/A, he corroborated on oath the contents of the reply submitted by the respondent. He also proved the documents Exhibits RW1/B to F. In the cross-examination, he deposed that 6-7 salesmen are serving the federation. He admitted that different items including eatables are sold on the depots of the federation. He admitted that as per the record no shortage or money is outstanding against the petitioner. He also admitted that no report was lodged with the police against the petitioner with regard to the embezzlement. Even no inquiry was conducted against him. He admitted that the petitioner had joined as a helper in the year 1986-87 and was appointed as a Salesman on daily basis w.e.f. 19.10.1988. Further, he admitted that Sh. Krishan Chand had joined as a helper in the year 1990 and was made regular salesman in the year 1995. He admitted that the petitioner is senior as a salesman to Sh. Krishan Chand whose services have been regularized. There is a difference of pay between the daily waged salesmen and regular salesmen. He admitted that generally a salesman is required to deposit some amount for shortage of the articles/Para 9A. Ex. RW1/B is the copy of the proceedings of the Board meeting dated 27.10.1995 of the respondent. It clarifies that the names of four persons namely S/Sh. Ramesh Chand (petitioner), Krishan Chand, Ashok Kumar and Swaran Singh salesmen were considered for regularization of their services. Only the name of Sh. Krishan Chand was cleared for regularization. The remaining three salesmen were given last opportunity to improve their work and conduct.

10. It is not the case of the petitioner that his services have not been regularized by the respondent as a measure of punishment or victimization.

It is the admitted case of the petitioner that he executed various affidavits the copies of which are Exhibits RW1/D to F, in favour of the respondent from time to time. The assertion of the petitioner that his signatures were procured on the affidavit Mark-Y (later on exhibited as Ex. RW1/D) under duress does not appear to be true since no such averment has been made by the petitioner in his petition/statement of claim and the rejoinder. The evidence of the petitioner to the effect that his signatures were obtained by the respondent forcibly being beyond his pleadings cannot be read.

11. Natural justice has no strait jacket. The application of the principles of natural justice would depend upon the facts and circumstances of each case. The principles of natural justice are not a mere ritual or dogma the violation of which would always result in a judicial or quasi judicial proceeding being vitiated. The proceedings will be vitiated only when it is also shown that such a violation has resulted in the failure of justice.

12. As already mentioned, it is not the case of the petitioner that his services have not been regularized as a measure of punishment or victimization. From the proceedings of the Board meeting dated 27.10.1995 the copy of which is Ex. RW1/B it can be gathered that the name of the petitioner was duly considered along with the remaining three salesmen namely S/Sh. Krishan Chand, Ashok Kumar and Swaran Singh for regularization of the services. True it is that the services of Sh. Krishan Chand (Salesman) who is/was junior to the petitioner were ordered to be regularized in the Board meeting dated 27.10.1995 ignoring the other three salesmen including the petitioner.

13. From the contents of the affidavits Exhibits RW1/C to F sworn by the petitioner from time to time, it becomes clear that his work and conduct were not upto the mark. He used to remain absent from duty without permission. Not only this, he embezzled substantial amount belonging to the respondent society. In the affidavits, the petitioner undertook that he will not remain willfully absent in future and will discharge his duties honestly. The contents of the affidavits in fact speak volumes about the work and conduct of the petitioner. To my mind, regularizing the services of a junior workman who is a good and honest worker vis-à-vis the senior one remaining absent from duty or embezzling the funds will not amount to 'unfair labour practice' as per Vth Schedule of the Act.

14. At the cost of reiteration I will like to add that the name of the petitioner was duly considered by the Board of the respondent/ society/federation for regularization of his services. The same did not find favour with the Board. It is common knowledge that no person can claim any service benefit or regularization of his services as a matter of right.

Moreover, by now, it is firmly established that while promoting a workman or regularizing his services, the criteria to be followed is of 'merit-cum-seniority' and not 'seniority-cum-merit'.

15. Taking into account the above noted facts especially the work and conduct of the petitioner I, for one, hold the opinion that he cannot claim the regularization of his services simply because the services of the person junior to him (but meritorious) have been regularized by the employer (respondent). The petitioner is in fact guilty of serious misconduct. He is not entitled to any relief.

16. This issue is decided against the petitioner and in favour of the respondent.

## **ISSUE NO.2**

17. Not pressed.

## **ISSUE NO.3**

18. In view of the observations made by a Division Bench of our Hon'ble High Court in The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and others, Latest HLJ 2007 (HP) 713, it is held that this Court/Tribunal has the jurisdiction to entertain and decide the reference.

19. This issue is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO.4)**

20. As a sequel to my findings on the above issues, the instant reference/claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room. Announced in the open Court today this 24th day of April, 2012.

By order,  
**(Rajan Gupta),**  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 225/2010**

**Date of Institution : 04.08.2010**

**Date of Decision : 06.03.2012**

Shri Ratti Ram s/o Shri Bhadru Ram, r/o Village Rasaid, P.O. Maseran, Tehsil Sarkaghat,  
Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division, Sarkaghat, District Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Ratti Ram s/o Shri Bhadru Ram by Executive Engineer, H.P.P.W.D. Division, Sarkaghat, District Mandi, H.P. w.e.f. 01.10.2006 without serving notice, charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim) is that his services were engaged by the respondent as a daily waged beldar on the muster roll w.e.f. 23.07.1999. He worked as such upto September, 2006. In the month of October, 2006 his services were unlawfully

terminated by the respondent. Before the termination of the services, no show cause notice was given to him. Neither he was charge-sheeted nor any enquiry was conducted. Not only this, one month pay in lieu of the notice period and retrenchment compensation were not paid to him at the time of the termination in question. He (petitioner) had completed more than 240 days in each calendar year of service as well as last 12 calendar months preceding the date of his termination. At the time of the termination in question, the respondent did not follow the principle of 'last come first go'. The persons junior to him (petitioner) have been retained in service by the respondent. The latter had not placed the seniority list of the daily waged workmen on the Notice Board at the time of his (petitioner's) termination. He has come to know from the reliable sources that after his disengagement from service, the respondent has appointed/engaged new/fresh hands in the Division. He (petitioner) was not given any opportunity of re-employment. After the termination of his services, he (petitioner) approached the respondent time and again upto the month of February, 2009 but no response was given by the respondent. Thereafter, he (petitioner) raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 ('the Act' for short) per registered letter dated 20.03.2009. Copy of the said letter was forwarded by him to the Labour-cum-Conciliation Officer, Mandi. During the conciliation proceedings, his (petitioner's) demand for reinstatement with all consequential benefits has not been accepted by the respondent. The persons, who were working with him and were junior to him at the time of termination of his services, have been regularized by the concerned department in the regular pay scale. He is entitled to the regularization as per the policy of the State Government framed from time to time or from the date his juniors have been regularized. He (petitioner) is still unemployed. He is, thus, entitled to full back wages. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and violates the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause, the applicant/petitioner has claimed the following relief(s) in this petition:

“i) The Hon'ble Court may kindly be set aside the unlawful termination order dated 01.10.2006 and directed to the respondent to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout. ii) The Hon'ble Court may kindly be directed to respondents to consider his regularization case as per the policy of the state government.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the statement of claim. Preliminary objections regarding the maintainability of the reference as well as the reference is hit by delay and laches on the part of the petitioner have been taken. It has been pleaded that no legal or fundamental right of the petitioner has been infringed by him (respondent).

On merits, it has been owned that the petitioner was engaged to render the services in H.P.P.W.D., Division Sarkaghat. However, it has been pleaded that he was employed as casual labourer for a specific work. The man days chart of the petitioner is appended as annexure R-I to the reply. The services of the petitioner were never terminated as alleged. He (petitioner) abandoned the job of his own in the month of September, 2006 and did not turn up thereafter despite the oral intimation sent to him by the department. The name of the applicant/petitioner figured in the muster roll till the month of June, 2007 which is clear from the man days chart attached to the reply. The question of serving any show cause notice upon the petitioner, charge sheeting him, conducting an enquiry or paying the salary in lieu of notice period does not arise since the petitioner/applicant himself abandoned the job. The principle of 'last come first go' does not come into play in the instant case as the petitioner left the job voluntarily. In spite of the said fact, the department time and again asked the petitioner to join his duties but he did not turn up. It

has been disputed that the respondent/department has engaged fresh labour as alleged. The petitioner never approached him (respondent) at any point of time to join the duties except for present industrial dispute. He (petitioner) is a defaulter. He did not care to resume the duties despite various requests. The petitioner is debarred by his act and conduct from claiming parity with the workmen who have worked continuously with him (respondent). After the abandonment of the services, the petitioner took whole time profession of agriculture for livelihood. He is/was gainfully employed. The petition is devoid of any merit. The petitioner/applicant is not entitled to any relief. In these circumstances the respondent prays that the petition/claim in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the statement of claim and denied the objections put forth by the respondent. It has been denied that he abandoned the job. Actually, the respondent did not allow him to perform his duties w.e.f. 21.09.2006. No written communication was sent by the respondent to him (petitioner) to report for duty.

5. Per order dated 24.03.2011, below given issues are struck by my ld. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.10.2006 is violative of the principle of Section 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

OPR

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?

OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not Pressed

Issue No.3 : No

Relief. : Reference allowed in part vide operative part of the Award.

### **REASONS FOR FINDINGS**

#### **ISSUE NO.1**

8. The petitioner Sh. Ratti Ram stepped into the dock as PW-1. He reiterated on oath the contents of the statement of claim in its entirety. He also stated that in the month of September, 2006, he remained ill for a few days. For the said reason, he could not attend his duties. He had intimated the department regarding his illness.

In the cross-examination, he stated that he remained ill for 1 ½ months. No written information in this regard was given by him to the department. He had conveyed to the Supervisor regarding his ill health. He got himself treated in a Government Hospital. The medical certificate was produced by him before the respondent department. He denied that neither he informed the

respondent about his illness nor produced any medical certificate to that effect. He also denied that he voluntarily left the service in the month of September, 2006 and the respondent kept on issuing the muster roll in his favour upto the month of June, 2007. He refuted that he was verbally asked by the respondent to join the duties. He denied that he was not interested to serve because of which he did not report for duty. He does not know that no person junior to him has been employed by the respondent department after the years 2006-2007. He (PW1) owns the land. He and his family members earn their livelihood by doing the agricultural work. He controverted that he has instituted a phoney petition to get the employment and grab the money.

9. Conversely, Sh. Vikram Singh Mehta, Executive Engineer, H.P.P.W.D., Sarkaghat Division appeared as RW1. He corroborated on oath the contents of the reply submitted by him (respondent). He also placed on the file the man days chart Ex. RW1/A. He testified that muster roll was issued in favour of the petitioner from October, 2006 to June, 2007 regularly despite the fact that he (petitioner) abandoned the job of his own in the month of September, 2006. The petitioner did not report for duty. He even did not intimate the department the reasons for his absence. Exhibits RW1/B1 to B9 are the copies of the muster rolls. Ex. RW1/C is the copy of the muster roll for the month of September, 2006. As per the policy of the Government, there is a ban on employment. No new recruitment has been done in his (RW1's) Division. Since the petitioner left the service of his own, he is not entitled to any relief. In his cross-examination, he admitted that when the petitioner was employed for the first time, no appointment letter was issued in his name. He also admitted that the petitioner had served for almost 240 days every year before leaving the job. He denied that the petitioner had informed the department regarding the illness. He admitted that in Ex. RW1/C, the petitioner has been shown absent from duty on a few days. He also admitted that in the muster roll Ex. PW1/B for the month of October, 2006, the name of the petitioner does not find mentioned. Self stated, the muster roll is issued as per the total strength of the workmen and the name of the workman is entered in the muster roll as and when he comes present. He admitted that in the month of October, 2006, no notice regarding willful absence from duty was served upon the petitioner. Volunteered, the petitioner worked only for 6 days in the month of September, 2006 and thereafter absented. He admitted that no retrenchment compensation was paid to the petitioner/applicant.

10. In the statement of claim and the rejoinder, the petitioner nowhere pleaded that he could not attend his duties due to the illness. His evidence to that effect being beyond the pleadings cannot be read. It is not the case of the petitioner that he was given the fictional breaks from time to time by the respondent or he (petitioner) remained idle during the period he is/was out of the job. It has come in the deposition of the petitioner (PW1) that he owns the landed property. He and his family members earn their livelihood by doing the agricultural work.

11. It is the admitted case of the respondent that the services of the petitioner were engaged by him as a casual labourer and the applicant/petitioner worked as per the man days chart Ex. RW1/A. Such chart is not in dispute.

12. From the man days chart Ex. RW1/A and Ex. RW1/C i.e. the copy of the muster roll from 01.09.2006 to 30.09.2006, it can be gathered that the petitioner worked only for 6 days in the month of September, 2006. Version of the respondent is that the petitioner abandoned the job of his own accord and free volition. It is common knowledge that the abandonment has to be proved by the respondent/employer like any other fact. There is nothing on the record to show that the respondent had sent a notice to the petitioner calling upon him to resume his duties. Further, the person who verbally asked the petitioner on behalf of the respondent to join the duties has not been brought to the witness box. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Therefore, the plea of abandonment set up by the respondent is not established.

13. Now comes the question as to whether the termination/retrenchment of the services of the petitioner by the respondent is in derogation of Sections 25-F, 25-G and 25-H of the Act or not?

14. From the man days chart Ex. RW1/A, it becomes clear that the petitioner had not completed 240 days of service in 12 calendar months preceding his date of retrenchment i.e. 01.10.2006. Therefore, it cannot be said that the petitioner was in 'continuous service for not less than one year' under the employer. As such, it can be safely said that the respondent has not contravened the provisions of Section 25-F of the Act.

15. The petitioner has not disclosed the name of any person who was junior to him and has been retained in service by the respondent. There is no seniority list on the file. Bald statement of the petitioner (PW1) to the effect that after his retrenchment, fresh hands have been recruited by the respondent or his juniors are still serving cannot be taken as a gospel truth. Rather, it has come in the statement of RW1 that the State Government has imposed a ban on new recruitment because of which no new person has been employed in his Division. In view of this situation, it cannot be said that the principle of 'last come first go' has been ignored by the respondent. The petitioner cannot derive any benefit under Section 25-G of the Act.

16. So far as Section 25-H of the Act is concerned, in my considered opinion, the petitioner is entitled to the protection under the said Section being a citizen of this country and the retrenched workman.

17. This issue has been answered accordingly.

## **ISSUE NO.2**

18. Not pressed.

## **ISSUE NO.3**

19. The industrial dispute was raised by the petitioner for the first time on 20.03.2009 as is evident from the photocopy of his letter placed on the record. There is no denial of the fact that the petitioner was retrenched w.e.f. 01.10.2006. No period of limitation has been provided in the Act for a workman to rake up the industrial dispute like the one in question. Thus, it cannot be said that the reference is hit by the vice of delay and laches.

20. This issue is decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO.4)**

21. As a sequel to my findings on the issues No. 1 to 3, the reference in hand is allowed in part. As and when the respondent proposes to take into his employment any person, he shall give an opportunity in writing to the petitioner for re-employment. The petitioner will have a preferential right of re-employment over other persons. He will be entitled to due seniority except back wages. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room. Announced in the open Court today this 6th day of March, 2012.

By order,  
**(Rajan Gupta),**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 337/2009**

**Date of Institution : 23.5.2009**

**Date of Decision : 19.4.2012**

Shri Shamsheer Singh s/o Shri Brij Lal, r/o Village Patohla, P.O. Sainthal, Tehsil Ladbharol, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. B.K. Sood, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Shamsheer Singh s/o Shri Brij Lal by the Executive Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, w.e.f. 21.10.2004 without complying the provisions of Industrial Disputes Act, 1947 and keeping his juniors in service is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster rolls in Sub Division, Lad Bharol in the year 1997. He worked upto 20.10.2004 under the Assistant Engineer. On 21.10.2004, his services were suddenly terminated by the respondent without giving any notice. Neither he was charge-sheeted nor any enquiry was conducted. One month pay in lieu of the notice period and retrenchment compensation were also not paid to him at the time of his illegal termination. While

dispensing with his services, the principle of 'last come first go' has not been followed by the respondent.

The persons junior to him (petitioner) namely S/Sh. Sanjeev Kumar, Janak Raj, Raj Kumar and Sansar Chand have been retained by the respondent. All the above named workmen are working in Sub Division Lad Bharol. He (petitioner) had completed 240 days of continuous service in every year from the year 1998 onwards as well as 12 calendar months preceding the date of his termination. After the termination of his services, in the year 2005 he (petitioner) approached the Hon'ble H.P. Administrative Tribunal, Shimla (camp at Mandi) and preferred an application. Such original application instituted by him was dismissed by the Hon'ble Tribunal for want of jurisdiction. He (petitioner) was also directed by the Hon'ble Tribunal to approach the appropriate Court/Forum for the redressal of his grievances. Thereafter, he (petitioner) served the demand notice dated 26.3.2007 upon the respondent. Copy of the said notice was forwarded by him to the Labour Officer, Mandi. The act and conduct of the respondent is highly illegal, unjustified and unconstitutional. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act for short). He is unemployed from the date of his termination.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

'1. The Hon'ble Court may kindly be passed the order to set aside the breaks period of applicant in his continuous service and the illegal termination order dated 21.10.2004 may also be set aside and directed to respondent to reinstatement his service with full back wages, seniority and in continuity of service with all consequential service benefits through out.'

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the petition is not maintainable as no legal or vested right of the petitioner has been infringed. The petition is time barred. The petitioner is estopped from filing the petition by his act, conduct and acquiescence. The petition has not been properly instituted. The same is bad for non-joinder of the necessary parties and mis-joinder of the parties. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on the muster rolls in the year 1997 and he worked as such upto 20.10.2004. However, it has been disputed that the petitioner was retrenched from service on 21.10.2004. In fact he absented from work and never applied for leave. Since the services of the petitioner were not terminated, the question of issuing any notice, chargesheeting him and conducting an inquiry does not arise. No retrenchment compensation is/was required to be paid to the petitioner. Earlier to the issuance of the demand notice dated 26.3.2007; the petitioner had raised a false dispute alleging therein that he has been retrenched from service. Such dispute was referred to the Labour Court at Shimla. It was registered as Reference No.114/03 (RBT No.317/04). The reference was finally dismissed by Labour Court, Shimla on 22.3.2006. Just after one year from the date of dismissal of the earlier case, the petitioner sent a revised demand notice dated 26.3.2007 under Section 2-A of the Act giving rise to the present industrial dispute/reference. As such, the instant reference is incompetent. As and when the services of the petitioner were terminated due notices were served upon him. No person junior to the petitioner has been reengaged/ regularized. S/ Sh. Piar Chand, Raj Kumar, Vijay Kumar, Onkar Singh, Rakesh Kumar, Janak Raj, Tilak Raj and Sanjay Kumar have been reengaged/ regularized as per the orders of the Court and under the Employment Assistance Scheme. The petitioner never completed 240 days of continuous service in any calendar year of his engagement except the year 2004. He was never retrenched from service as alleged. The petitioner never approached him (respondent) for re-engagement. He left the job of his own accord and free will. No fictional breaks were given to the petitioner. He is not entitled to any relief.

In these circumstances, the respondent prays that the reference in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that he never abandoned the job. His (petitioner's) services were disengaged from time to time and finally terminated on 21.10.2004. Breaks were given to him during the period of service so that he does not complete 240 days of continuous service in a year.

5. Per order dated 22.04.2010, below given issues were struck by my ld. Predecessor:

1. Whether the services of the petitioner were terminated on 21.10.2004 in contravention of the provision of Section 25-F of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

OPP

2. Whether the respondent has retained person junior to the petitioner and violated the provision of Section 25-G of the Industrial Disputes Act, 1947. If so, to what effect?

OPP

3. Whether the reference is barred by time as alleged. If so, to what effect?

OPR

4. Whether the petition is bad for mis-joinder of the necessary party as alleged. If so, to what effect?

OPR

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Reference allowed in part vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both the issues are taken up together for adjudication.

9. The petitioner Shri Shamsher Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the demand notice dated 26.3.2007 served upon the respondent by him. Mark-A is the copy of service particulars of daily waged beldars as it stood on 30.9.2007 in respect of the office of the respondent.

In the cross-examination, he admitted that after issuing a demand notice, similar dispute was raised by him in the year 2003. He admitted that on the basis of the earlier demand notice, the case was referred to Labour Court, Shimla and the matter was decided against him on 22.3.2006 by the Court. He admitted that another demand notice dated 30.6.2006 was sent by him to the respondent. In the notice dated 30.6.2006, he had claimed that he was appointed as a beldar on 21.10.2003 and removed from service on 21.9.2004. Again said his services were disengaged w.e.f. 21.10.2004. He denied that the revised demand notice dated 26.3.2007 (Ex. PW1/B) was sent by him to the respondent/department. He denied that he was not retrenched from service on 21.10.2004 and he absented from duties of his own. No application for the grant of leave was moved by him before his superiors. He admitted that the persons junior to him have been employed as per orders of the Court. He denied that he has instituted a phoney case to get the employment and grab the money.

10. Conversely Sh. Parvesh Thakur, Sr. Executive Engineer, HPSEB, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He also placed on the record various documents.

In the cross-examination, he admitted that no notice was served upon the petitioner regarding his absence from duty. He also admitted that the seniority list Mark-P (it corresponds to Mark-A) bears his signatures. He admitted that as per the record, Sh. Sanjeev Kumar was employed on 25.9.1998. Self stated, his services were re-engaged on 21.10.2001 as per the orders of the Court.

11. Exs. RA to RC are the copies of various termination notices served upon the petitioner upto the year 2001.

12. Ex. RD is the man days chart relating to the petitioner.

13. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 27.10.1997 and he worked as such upto 20.10.2004 with certain breaks. The version of the respondent is that the services of the petitioner were not dispensed with. In fact he abandoned the job of his own accord and free volition. It is common knowledge that the abandonment has to be proved by the respondent/employer like any other fact. There is nothing on the record to show that the respondent had sent a notice to the petitioner calling upon him to resume his duties. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Therefore, the plea of abandonment set up by the respondent is not established.

14. From the deposition made by PW1 coupled with the man days chart Ex. RD placed on the record, it becomes crystal clear that the petitioner had completed 240 days of continuous service in 12 calendar months preceding the date of his retrenchment. There is nothing on the record to show that one month's notice in writing indicating the reasons for retrenchment was served upon the petitioner by the respondent. There is nothing on the file to suggest that the retrenchment compensation was paid to the petitioner. Therefore, the act of the respondent is violative of Section 25-F of the Act.

15. Not only this, from the seniority list, the copies of which are Marks-A and P, it can be gathered that the persons junior to the petitioner have been retained in service by the respondent. Even new/fresh hands have been engaged by the respondent. No opportunity of re-employment was given to the petitioner. The principle of 'last come first go' has not been adhered to by the respondent. His (respondent's) action, thus, infringes the provisions of Sections 25-G and 25-H of the Act.

16. So far as the dismissal of the earlier reference by the Labour Court, Shimla pursuant to the demand notice served by the petitioner is concerned, I will like to say that neither the copy of the demand notice nor the copy of the Award pronounced by the Court have been placed on the record by the respondent. In view of the said fact, it cannot be said with certainty as to what type of industrial dispute was raised by the petitioner earlier which did not find favour with the Court. The ld. counsel for the respondent is unable to show me that the instant reference is not tenable in view of the provisions contained under Order 2 Rule 2 CPC or Order 23 CPC.

17. These issues are decided in favour of the petitioner and against the respondent.

### ISSUE NO.3

18. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

20. This issue is also decided in favour of the petitioner and against the respondent.

### ISSUE NO.4

21. Not pressed.

### RELIEF (ISSUE NO.5)

22. In view of my findings on the aforesaid issues, the reference in hand succeeds and the same is allowed in part. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal retrenchment i.e. 21.10.2004 except back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room. Announced in the open Court today this 19th day of April, 2012.

By order,  
**(Rajan Gupta),**  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR  
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 109/2010**

**Date of Institution : 20.5.2010**

**Date of Decision : 21.4.2012**

Shri Vinod Kumar s/o Shri Krishan Chand, r/o Village & P.O. Ambota, Tehsil & District Una, H.P.

...Petitioner

Versus

Principal, Dr. B.R. Ambedkar, Government Polytechnic, Ambota, District Una, H.P.

...Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajiv Jamwal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Shri Vinod Kumar s/o Shri Krishan Chand by the Principal, Dr. B.R. Ambedkar, Government Polytechnic, Ambota, District Una, H.P. w.e.f. 14-08-2007 without serving charge sheet, without enquiry and without complying with the provisions of The Industrial Disputes Act, 1947 is proper and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as beldar/semi skilled worker under the community development scheme by the respondent/department on 11th September, 2000 to carry out the civil works etc. under the transfer of technology under community polytechnic scheme of the Government of India. He worked regularly as such to the entire satisfaction of the respondent. No complaint was received against him. The respondent was very much satisfied with his ability to work. He was accordingly appointed as a Semi Skilled Craftsman per office order dated 12.5.2006, the copy of which is annexed as annexure A-I to the petition. On 14.8.2007, his services were verbally terminated by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (the Act for short). He had completed 240 days of continuous service in each calendar year from the date of his appointment as beldar without any break. He had also completed seven years of service till the date of his termination. Other workers engaged by the respondent/department on similar posts after his (petitioner's) appointment have been retained in service in the Government Polytechnic Colleges at Sunder Nagar and Hamirpur. Those workers have also been absorbed in service by the department. Since he (petitioner) worked for seven years without break, his services are/were required to be regularized as per the policy of the Government. Persons junior to him have been retained in the other polytechnics by the respondent/department. He (petitioner) did request the respondent not to disengage his services, but in vain. He was thrown out of the service on political consideration. The act of the respondent is arbitrary and unconstitutional.

As such, as is evident from the prayer clause of the petition/statement of claim the petitioner has claimed the following relief(s) in this petition:

- “1. That the respondent be directed to re-engage the applicant on the same post from where his services were illegally and wrongly terminated with effect from 14.8.2007 with back wages and seniority.
2. That the respondent be also directed to regularize the services of the applicant from the date of completion of 7 years of regular service with full benefits as per Govt. Policy.
3. Any other relief which this tribunal deems fit and proper in the facts and circumstances of the cases.

It is therefore prayed that the claim petition of the applicant may be allowed in the interest of justice.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the claim petition is bad on account of delay and laches on the part of the petitioner. He has misrepresented the facts and has come to the Court by concealing the material particulars. The petition has become in fructuous with the efflux of time. No legal and fundamental right of the petitioner has been infringed. His services were engaged on account of project/scheme i.e. the scheme of community polytechnics, a plan scheme of the Government of India. The said scheme stands closed w.e.f. 31.7.2007. For the said reason, the petition is not maintainable. The relevant extracts of the scheme are attached as annexure R-1 and R-2 to the reply.

On merits, it has been owned that the petitioner was employed as a beldar in the above noted scheme w.e.f. 11.9.2000. Thereafter vide office order dated 12.5.2006, he was employed as a Semi Skilled Craftsman under the scheme which stands closed w.e.f. 31.7.2007. The muster roll vide which the petitioner was initially engaged as beldar, his mandays chart as beldar and the appointment letter as a Semi Skilled Craftsman are appended as annexures R-3 and R-4 to the reply. The petitioner continued to work as beldar under the scheme as per the availability of work and funds. The work was made available to the petitioner and similarly situated workmen as per the requirement of the scheme as is evident from the mandays chart annexure R-3. It stands admitted that the petitioner was appointed as a semi skilled craftsman per office order dated 12.5.2006. Since the petitioner had gained sufficient experience and skill as a beldar, his category was enhanced from beldar to craftsman as provided at serial No.5 of para 6.4 regarding Staff Structure and Remuneration in Chapter VI of the Scheme. Consolidated honorarium of Rs.1800/- each month was ordered to be paid to the petitioner per office order dated 12.5.2006 (annexure R-4). The terms and conditions of the appointment were duly accepted by the petitioner who executed a bond/agreement as provided in para 6.7 of Chapter VI of the scheme. The copy of the bond/agreement w.e.f. 15.5.2006 to 14.11.2006 is annexed as annexure R-5 to the reply. Keeping in view the need and requirement of the project/scheme, the services of the petitioner were extended in the category of the craftsman firstly vide office order dated 12.5.2006 and lastly per office order dated 18.5.2007 till the expiry of the scheme. The copy of the office order dated 18.5.2007 is attached as annexure R-6 to the reply. The copy of the agreement/bond qua extension and office letters are annexed as annexures R-5 and R-7 to the reply. The engagement of the petitioner was on account of the scheme/project. The same was coterminus with the closure of the project/scheme. The petitioner was duly apprised about the terms and conditions of his engagement firstly as beldar and, thereafter, as Semi Skilled Craftsman. The appointment letter coupled with the terms and conditions of the scheme make it clear that he (petitioner) will have no right to claim the regularization of his services and enhancement of honorarium etc. The engagement of the petitioner

was subject to the availability of funds from MHRD, Government of India, in the absence of which the engagement shall cease automatically. The terms and conditions of the scheme were duly accepted by the petitioner by executing the agreements from time to time. Per letter dated 30.7.2007 issued by MHRD, Government of India, the scheme stands closed w.e.f. 31.7.2007 (annexure R-2). The copy of this letter was received on 14.8.2007. Accordingly, the petitioner and other categories of staff engaged under the scheme were disengaged on 14.8.2007. The emoluments/remuneration due to all the categories of staff and employees were paid upto 13.8.2007 by obtaining special sanction from the Ministry of Human Resources Development (MHRD), Government of India vide letter dated 29.11.2007, the copy of which is annexure R-8. Thus, nothing is due to the petitioner after the closure of the scheme. He is not entitled to any protection under the Act. As per the scheme the engagement in the category of craftsman was on payment of the consolidated remuneration @ Rs.1800/- per month to Rs.1900/- per month. This remuneration was duly accepted by the petitioner by executing an agreement with it (respondent). No fictional breaks were ever given to the petitioner. In accordance with paras 6.12 and 6.13 norms and guidelines of the scheme, the Principal of concerned Community Polytechnics are the sole implementing agency for running the scheme. No parity can be claimed with the employees/staff engaged in such scheme by the other similarly situated community polytechnics i.e. Sundernagar and Hamirpur. Moreover, none of the employees has been absorbed/retained in the regular employment by the other polytechnics as alleged by the petitioner. The information given by Sundernagar and Hamirpur polytechnics is annexed as annexures R-9 (i) & R-9 (ii) to the reply. None of the beldars, who were engaged with the initiation of the scheme, has been retained/re-engaged in service after the closure of the scheme. With the available pattern of the work rendered as daily wager the petitioner is not entitled to the regularization of his services under the prevailing policy of the Government. The seniority lists of the beldars and Craftsmen are attached as annexures R-10 and R-11 to the reply. No policy of the State Government makes a workman entitled to the regularization of his services on completion of seven years of continuous service as claimed by the petitioner. With the closure of the scheme, no work is available for the petitioner and other similarly situated staff engaged under the scheme. No provision of the Act has been infringed. The services of the petitioner were dispensed with on the closure of the scheme to which he duly consented at the time of acceptance of the offer/engagement in the category of the craftsman. The present industrial dispute has been raised by the petitioner in the year 2008 i.e. at a belated stage. Copy of the demand notice received from the petitioner is appended as annexure R-12 to the reply. The petitioner is gainfully employed in the private sector after the closure of the scheme. The petition is devoid of any merit. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that his signatures were obtained on the bonds by threatening that in case he does not sign the same he will be removed from service. He was not aware of the contents of the bond(s).

5. Per order dated 14.09.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 14.8.2007 is violative of the provisions of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to?

OPP

2. Whether the reference is not maintainable as having been appointed against the specific scheme/project as alleged. If so, to what effect?

OPR

3. Whether the reference is hit by vice of delay and laches as alleged. If so, to what effect.

OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Redundant

Relief. : Reference/claim petition dismissed vide operative part of the Award.

### REASONS FOR FINDINGS

#### ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Vinod Kumar stepped into the dock as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that initially his services were engaged as beldar by the respondent on 11.9.2K. Other workers have been retained in service by the respondent. S/Sh. Bhagwan Dass and Ramesh are still serving in Polytechnic College, Hamirpur.

In the cross-examination, he admitted that S/Shri Bhagwan Dass and Ramesh never worked in Ambota Polytechnic College (respondent). He (PW1) admitted that he was employed under the scheme/project meant for community polytechnics. He worked under the said scheme upto 13.8.2007. He worked as a beldar upto 14.5.2006 against the muster rolls. He admitted that on 12.5.2006 he was appointed as a semi skilled craftsman by the respondent. He also admitted that at the time of his appointment as a semi skilled Craftsman, he had signed an affidavit/agreement. Further, he admitted that the respondent used to issue the office order(s) after every six months with regard to his employment. He (PW1) feigned ignorance about the fact that the scheme came to an end on 31.7.2007. He admitted that he has been paid the remuneration upto 14.8.2007. He denied that he joined as semi skilled craftsman with the condition that as and when the scheme comes to an end, his services will be terminated. He admitted that after his appointment as a semi skilled craftsman, he was being paid lump sum amount of Rs.1800/- as remuneration. Subsequently his remuneration was enhanced to Rs.1900/- per mensem. He (PW1) does not know that the schemes are implemented by the Polytechnic Colleges at their own level and the policy of regularization of the services of workmen does not apply to a scheme/project. He denied that nowadays he is serving the MBD. He even denied that S/Shri Bhagwan Dass and Ramesh have been removed from service due to the closure of the scheme. He does not know that no person junior to him is serving the respondent/department.

10. Conversely, Sh. S.K. Gautam, Principal, Dr. B.R. Ambedkar, Govt. Polytechnic Ambota (respondent) testified as RW1. In his affidavit Ex. RW1/A, he corroborated on oath the contents of the reply submitted by him. He also placed on the record a number of documents viz Exhibits RW1/B to P.

In the cross-examination, he admitted that at the time of termination of services of the petitioner, no notice was given to him. He denied that the signatures of the petitioner were procured on blank papers i.e. the agreements Exs. RW1/F and H. He also denied that the persons junior to the petitioner namely Sh. Bhagwan Dass etc are still serving the respondent/polytechnic/Para 10A. Ex. RW1/B is the copy of the norms and guidelines of the scheme of community polytechnics.

11. Ex. RW1/C is the copy of the letter dated 30th July, 2007 written by MHRD, Government of India to the Principals of Polytechnics indicating that all on going activities under the scheme should be wound up and no fresh expenditure should be incurred after 31.7.2007.

12. Ex. RW1/D is the year-wise mandays chart relating to the petitioner while he worked as beldar in the respondent/college under the scheme.

13. Ex. RW1/E is the copy of the office order dated 12.5.2006 issued by the Project Officer, CDC Scheme, Dr. B.R. Ambedkar, Govt. Polytechnic College, Ambota (respondent) to the effect that the services of the petitioner are engaged as a semi skilled craftsman to carry out the civil activities etc. for a period of six months i.e. w.e.f. 15.5.2006 to 14.11.2006 under the community polytechnic scheme of the Government of India. The appointment was made purely on temporary basis. The same was to be effective from the date of submitting an agreement by the petitioner. He was to be paid the consolidated honorarium @ Rs.1800/- per month during the period of his engagement. It was clearly mentioned in the office order that since the scheme is purely plan scheme of MHRD, Government of India, the petitioner will have no right to claim regularization of his services and enhancement of honorarium etc. The engagement will be subject to the availability of funds from MHRD, Government of India. In the absence of the funds the engagement of the petitioner shall cease automatically.

14. Ex. RW1/F is the copy of the agreement dated 26.5.2006 executed by the petitioner in favour of the respondent.

15. Ex. RW1/G is the copy of the office order dated 18.5.2007 vide which the services of the petitioner were engaged as a semi skilled craftsman on the above noted terms and conditions w.e.f. 21.5.2007 to 20.11.2007. Of course, as per this office order, the honorarium payable to the petitioner was increased from Rs.1800/- to Rs.1900/- per mensem.

16. Ex. RW1/H is the copy of the agreement dated 18.5.2007 which was executed by the petitioner in the name of the respondent.

17. Ex. RW1/J is the copy of the letter dated 29.11.2007 written by MHRD, Government of India to the Principal of the respondent/college to make the payment of the remuneration of the staff which worked under the scheme for the month of August, 2007 after its closure w.e.f. 31.7.2007.

18. Ex. RW1/K and L are the copies of the letters written by the Principals, Polytechnics, Sundernagar and Hamirpur to the effect that no person whose services were engaged under the

community development scheme has been absorbed/adjusted in the Polytechnic stream. The services of the staff engaged under the scheme have come to an end with the closure of the scheme.

19. Ex. RW1/M is the copy of the seniority list of the beldars working under the CDC scheme from its inception. The name of the petitioner figures at serial No.4.

20. Ex. RW1/N is the copy of the extract evidencing that the services of the petitioner were engaged as semi skilled craftsman from time to time.

21. Ex. RW1/P is the copy of the demand notice which was served upon the respondent by the petitioner under Section 2-A of the Act.

22. Ex. RW1/O is the copy of the letter dated 21.10.2011 written by the Principal, Government Polytechnic, Hamirpur to the Principal of the respondent/college. It indicates that community development work was closed in the month of July, 2007. S/Shri Bhagwan Dass and Ramesh Chand were working as beldars under the scheme. Their services were terminated on the closure of the scheme by the Central Government. In January, 2008, two posts of Chowkidars under the Student Welfare Fund were advertised as per the R&P Rules. Subsequently, on the basis of interview, S/Sh. Bhagwan Dass and Ramesh Chand were selected and appointed as Chowkidars. Their selection was purely on merit and not on the basis of the services rendered by them in the community development scheme.

23. It is the admitted case of the parties that the services of the petitioner were initially engaged as beldar in the project/scheme i.e. scheme of community polytechnics on 11th September, 2000. Per office order dated 12.5.2006, the copy of which is Ex. RW1/E the petitioner was appointed as a semi skilled craftsman for the first time for a period of six months w.e.f. 15.5.2006 to 14.11.2006 on his executing a bond and on payment of consolidated honorarium @ Rs.1800/- every month. The appointment of the petitioner as a semi skilled craftsman was purely on temporary basis and was to be effective from the date of submitting the agreement. There is no denial of the fact that subsequently the services of the petitioner as a semi skilled craftsman were extended per office order dated 18.5.2007, the copy of which is Ex. RW1/G. The terms and conditions of the employment of the petitioner for six months w.e.f. 21.5.2007 to 20.11.2007 remained the same. Of course, the honorarium was increased from Rs.1800/- to Rs.1900/- per month. It was clearly mentioned in the office orders that the engagement of the petitioner will be subject to availability of funds from MHRD, Government of India in the absence of which the engagement shall cease automatically.

24. Before joining as a semi skilled craftsman, the petitioner had executed the agreements, the copies of which are Exhibits RW1/F and H as per the terms and conditions of the office orders. Their perusal discloses that the petitioner admitted the terms and conditions of his appointment as contained in the office orders. He admitted that he will have no right to remain in service or claim the regularization of his services.

25. The petitioner in his rejoinder has pleaded that his signatures were obtained on the agreements by the respondent by threatening that in case he does not sign the same, he will be removed from service. A question was put in the suggestive form to Sh. S.K. Gautam (RW1) to the

effect that the signatures of the petitioner were procured on the agreements/blank papers. This clearly indicates that the stand taken by the petitioner is contradictory and he is not speaking the truth. It speaks volumes about the truthfulness and veracity of his claim. The law presumes that a person signing the document agrees to its contents. In view of the office orders (the copies of which are Exhibits RW1/E and G) containing the terms and conditions of appointment of the petitioner as well as the execution of the agreements (the copies of which are Exhibits RW1/F and H) by him, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his services have been disengaged by the respondent illegally or in violation of the provisions contained under the Act.

26. In S.M. Nilajkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608, the Hon'ble Supreme Court has held as under:

“.....The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- i) that the workman was employed in a project or scheme or temporary duration;
- ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided interalia that the employment shall come to an end on the expiry of the scheme or project; and
- iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.....”

27. Taking into account the facts and circumstances of this case as well as the trite laid down in the ruling cited supra, in my considered opinion the petitioner is not entitled to any relief. The claim put forth by him is fallacious.

28. These issues are decided against the petitioner and in favour of the respondent.

### **ISSUE NO.3**

29. Taking into account my findings on issues No.1 and 2, this issue has become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like 'flogging a dead horse'.

30. The issue has been answered accordingly.

### **RELIEF (ISSUE NO.4)**

31. As a sequel to my findings on the above issues, the instant reference/claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of April, 2012.

By order,  
(Rajan Gupta),  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

## राज्य निर्वाचन आयोग हिमाचल प्रदेश

## STATE ELECTION COMMISSION HIMACHAL PRADESH

मजीठा हाऊस शिमला-2, Majitha House, Shimla-171002 Tel. 0177-2620152, 2620159, 2620154, Fax. 2620152

## अधिसूचना

Shimla, the 29 May, 2012

**No. SEC: 13-96/2012- 1729-34.**—यतः हिमाचल प्रदेश नगर निगम (निर्वाचन) नियम 2012 के नियम 23 की अनुपालना में राज्य निर्वाचन आयोग द्वारा जारी अधिसूचना संख्या 13-96/2012-1024-1191 दिनांक 27 अप्रैल 2012 व उक्त नियमावली के नियम 34 के अन्तर्गत जारी निर्वाचन नोटिस के अन्तर्गत नगर निगम शिमला के गठन हेतु निर्वाचन करवा लिए गए हैं:

यतः नगर निगम शिमला के महापौर, उपमहापौर व समस्त 25 वार्डों के पार्षदों के परिणाम रिटर्निंग अधिकारी शिमला द्वारा घोषित कर दिए गए हैं तथा इनकी रिटर्न नियम 80 (4) के अन्तर्गत आयोग में प्राप्त हो गई है ।

अतः हि0प्र0 नगर निगम अधिनियम, 1994 की धारा 13 की अनुपालना में राज्य निर्वाचन आयोग नगर निगम शिमला के लिए निर्वाचित हुए पदाधिकारियों के नामों को निम्नानुसार अधिसूचित करता है:—

महापौर

संख्या	नगर निगम	निर्वाचित उम्मीदवार का नाम व पता	पार्टी का नाम
1.	शिमला	श्री संजय चौहान, आशिया पन्थाधाटी शिमला-9	CPI(M)

उप-महापौर

संख्या	नगर निगम	निर्वाचित उम्मीदवार का नाम व पता	पार्टी का नाम
1.	शिमला	श्री टिकेन्द्र पंवर, पंवर लाज ऐयर पोर्ट रोड, दूदू, शिमला	CPI(M)

पार्षद

संख्या	वार्ड का नाम	निर्वाचित उम्मीदवार का नाम व पता	पार्टी का नाम
1.	भराड़ी (महिला)	श्रीमति कला शर्मा, 7, सन्त काटेज, भराड़ी शिमला ।	BJP
2.	रुलदू भट्टा(महिला)	श्रीमति सरोज ठाकुर, कृष्णा काटेज, रुलदू भट्टा, शिमला ।	BJP
3.	कैथू(महिला)	श्रीमति कान्ता सुयाल, हरी काटेज, लोअर कैथू, शिमला ।	CPI(M)
4.	अनाडेल (अ0जा0महिला )	श्रीमति लक्ष्मी, कश्यप निवास कैथू, अनाडेल, शिमला ।	BJP
5.	समरहिल(महिला)	सुश्री दीक्षा ठाकुर, ठाकुर निवास अन्दली, समरहिल, शिमला	CPI(M)
6.	दूदू(महिला)	श्रीमति निर्मला चौहान, चौहान निवास, शिव नगर, दूदू शिमला ।	BJP
7.	बालूगंज (महिला)	श्रीमति उषा देवी लखनपाल, लखनपाल निवास, तारादेवी शिमला-10.	INC
8.	दुटीकण्डी(महिला)	श्रीमति उमा कौशल, हीरा निवास, दूटीकण्डी, शिमला	INC
9.	नाभा	श्री शशी शेखर, पठानिया, निवास, लाल कोठी, लोअर फागली, शिमला ।	INC
10.	फागली(अ0जा0)	श्री कल्याण चन्द, लाल कोठी फागली शिमला ।	BJP
11.	कृष्णानगर(अ0जा0महिला )	श्रीमति रजनी सिंह, लेबर होस्टल कृष्णानगर शिमला ।	BJP

12.	राम बाजार गंज(महिला)	श्रीमति सुषमा कुठियाला, 78 बुटेल निवास, राम बाजार, शिमला।	INC
13	लोअर बाजार(महिला)	श्रीमति भारती सूद, 34/1, सीता राम नत्थू राम भवन, लोअर बाजार, शिमला।	BJP
14	जाखू	श्री मनोज कुठियाला, एवर गिल्डी काटेज, जाखू, शिमला।	BJP
15	बैनमोर	श्री अनूप बैद्य, बैद्य काटेज, स्टोक्स प्लेस, शिमला।	BJP
16	इंजनधर	श्री सुशान्त कपरेट, शान्ता निवास, संजौली, शिमला।	INC
17	संजौली चौक (महिला)	श्रीमति सत्या कौंडल, मयूर निवास, नॉर्थ आक, संजौली, शिमला।	BJP
18	ढली	श्री शैलेन्द्र चौहान, ब्रेकटा निवास नजदीक दुर्गा मन्दिर, ढली, शिमला।	BJP
19	चमगाणा	श्री नरेन्द्र कुमार, 61/1 डोगरा निवास गडान, डा0 कमला नगर, संजौली, शिमला।	CPI(M)
20.	मल्याणा	श्री कुलदीप ठाकुर, गांव शनान, डा0 संजौली, शिमला।	INC
21.	कसुम्पटी (महिला)	श्रीमति कुसुम ठाकुर, मोहित विला, कसुम्पटी, शिमला।	BJP
22.	छोटा शिमला	श्री सुरेन्द्र चौहान, औषटागन लाज, सैट न0-1, छोटा शिमला।	INC
23.	पटयोग	श्री दीपक रोहाल, रोहाल विला, सैक्टर-1, न्यू शिमला।	INC
24.	खलिणी (अ0जा0 )	श्री प्रवीन कुमार, सावित्री निवास, खलीणी शिमला-2।	INC
25.	कनलोग	श्री अलोक पठानिया, आनन्द विला, टालैण्ड, शिमला।	INC

राज्य निर्वाचन आयोग, हिमाचल प्रदेश के आदेश द्वारा।

हस्ता0/—  
(हिमांशु शेखर चौधरी)  
सचिव,  
राज्य निर्वाचन आयोग,  
हिमाचल प्रदेश।

## राज्य निर्वाचन आयोग हिमाचल प्रदेश

### STATE ELECTION COMMISSION HIMACHAL PRADESH

मजीठा हाऊस, शिमला .171002, Majitha House Shimla-171002 Tel. 0177-2620152, 2620159, 2620154, Fax. 2620152

### NOTIFICATION

*Shimla, the 29.05.2012*

**No. SEC.13-96/2012-1729-33.**—Whereas in pursuance of Notification No. SEC.13-96/2012-976-1023 dated 27th April, 2012 issued under rule 33 and the notice of election under rule 34 of the Himachal Pradesh Municipal Corporation Election Rules, 2012, elections have been held for the purpose of constitution of Municipal Corporation, Shimla;

And whereas, the results of the elections of Mayor, Deputy Mayor and Councilor of all the 25 wards of the Municipal Corporation of Shimla have been declared by the Returning Officer,

Shimla and return of the same has been received in Commission as required under Rule 80(4) of the Himachal Pradesh Municipal Corporation Election Rules, 2012;

Now, therefore, in pursuance of Section 13 of the Himachal Pradesh Municipal Corporation Act, 1994 the State Election Commission hereby notifies the name of the elected office bearers to the Municipal Corporation, Shimla as under:-

### **MAYOR**

<b>Sr. No</b>	<b>Municipal Corporation</b>	<b>Name &amp; Address of elected candidate</b>	<b>Party Name</b>
1.	Shimla	Sh. Sanjay Chauhan, Aashia, Panthaghatti, Shimla-9	CPI(M)

### **DEPUTY MAYOR**

<b>Sr. No</b>	<b>Municipal Corporation</b>	<b>Name &amp; Address of elected candidate</b>	<b>Party Name</b>
1.	Shimla	Sh. Tikender Panwar, Panwar Loadge, Airport Road, Totu, Shimla.	CPI(M)

### **COUNCILOR**

<b>Sr. No</b>	<b>No. &amp; Name of Ward</b>	<b>Name &amp; Address of elected candidate</b>	<b>Party Name</b>
1.	1-Bharari (W)	Smt. Kala Sharma, 7, Sant Cottage, Bharari, Shimla.	BJP
2.	2-Ruldu Bhatta (W)	Smt. Saroj Thakur, Krishna Cottage, Ruldu Bhatta, Shimla.	BJP
3.	3-Kaithu (W)	Smt. Kanta Suyal, Hari Cottage, Lower Kaithu, Shimla.	CPI(M)
4.	4-Annadale (SC-W)	Smt. Lakshmi, Kashyap Niwas, Kaithu, Annadle Shimla.	BJP
5.	5-Summer Hill (W)	Ms. Diksha Thakur, Thakur Niwas, Andli Summerhill, Shimla.	CPI(M)
6.	6-Totu (W)	Smt. Nirmala Chauhan, Chauhan Niwas, Shiv Nagar, Totu Shimla.	BJP
7.	7-Boileauganj (W)	Smt. Usha Devi Lakhanpal, Lakhanpal Niwas, Taradevi, Shimla-10.	INC
8.	8-Tuti Kandi (W)	Smt. Uma Kaushal, Hira Niwas Tutikandi, Shimla.	INC
9.	9-Nabha	Sh. Shashi Shekher, Pathania Niwas, Lal Kothi, Lower Phagli, Shimla	INC
10.	10-Phagli (SC)	Sh. Kalyan Chand, Lal Kothi, Phagli, Shimla.	BJP
11.	11-Krishna Nagar (SC-W)	Smt. Rajni Singh, Labour Hostel, Krishna Nagar, Shimla.	BJP
12.	12-Ram Bazar Ganj (W)	Smt. Sushma Kuthiala, 78 Butail Niwas, Ram Bazar, Shimla.	INC
13.	13-Lower Bazar (W)	Smt. Bharti Sood, 34/1 Sita Ram Nathu Ram Bhawan, Lower Bazar, Shimla.	BJP
14.	14-Jakhu	Sh. Manoj Kuthiala, Ever Gildi Cottage, Jakhu, Shimla.	BJP
15.	15-Benmore	Sh. Anup Vaid, Vaid Cottage, Stokes Place,	BJP

		Shimla.	
16.	16-Engine Ghar	Sh. Sushant Kaprate, Shanta Niwas, Sanjauli, Shimla.	INC
17.	17-Sanjauli Chowk (W)	Smt. Satya Kaundal, Mayur Niwas, North Oak Sanjauli, Shimla.	BJP
18.	18-Dhalli	Sh. Shelinder Chauhan, Bekta Niwas, Near Durga Mandir, Dhalli, Shimla.	BJP
19.	19-Chamayana	Sh. Narinder Kumar, 61/1, Dogra Niwas, Gahan, P.O. Kamla Nagar, Sanjauli, Shimla.	CPI(M)
20.	20-Malyana	Sh. Kuldeep Thakur, Village Shanan P.O.Sanjauli, Shimla.	INC
21.	21-Kasumpati (W)	Smt. Kusum Thakur, Mohit Villa, Kusumpti, Shimla.	BJP
22.	22-Chota Shimla	Sh. Surinder Chauhan, Set No.1, Ooctagun Lodge, Chhota, Shimla.	INC
23.	23-Pateog	Sh. Deepak Rohal, Rohal Villa, Sector-1, New Shimla.	INC
24.	24-Khalini (SC)	Sh. Parveen Kumar, Savitri Niwas, Khalini, Shimla-2.	INC
25.	25-Kanlog	Sh. Alok Pathinia, Anand Villa, Talland, Shimla.	INC

**By order of the State Election Commission, Himachal Pradesh.**

Sd/-  
**(H. S. Chaudhary),**  
*Secretary,*  
*State Election Commission,*  
*Himachal Pradesh.*

